MOTION FILE
JAN 31 1978

Supreme Court, U. S.
FILED
JAN 31 1978
MICHAEL RODAK, JR., CLERK

No. 76-1607

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

SAMUEL H. SLOAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* OF CANADIAN JAVELIN LIMITED

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Statutes and Regulations
Securities Exchange Act of 1934

12. (a) It shall be unlawful for any member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this chapter and the rules and regulations thereunder.

Act of June 6, 1934, c. 404 § 12, 48 Stat. 892, 15 U.S.C. § 78*l*(a).

12. (b). A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may be rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following: . . . [Subparagraphs A through L omitted].

Act of June 6, 1934, c. 404 § 12, 48 Stat. 892, 15 U.S.C. § 78*l*(a); Aug. 20, 1964, Pub.L. 88-467, § 3, 78 Stat. 565-568, 15 U.S.C. § 78*l*(b).

12. (j) The Commission is authorized by order, as it deems necessary or appropriate for the protection of investors, to deny, to suspend the effective date of,

to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

Act of June 4, 1975, Pub.L. 94-29, § 9, 89 Stat. 118, 15 U.S.C. § 78*l*(j).

12. (k). If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

Act of June 4, 1975, Pub.L. 94-29, § 9, 89 Stat. 118, 15 U.S.C. § 78*l*(k).

13. (a). Every issuer of a security registered pursuant to section 12 of this chapter shall file with the

Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12 of this chapter, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof) as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange.

Act of June 6, 1934, c. 404 § 13, 48 Stat. 894; Aug. 20, 1964, Pub.L. 88-467, § 4, 78 Stat. 569, 15 U.S.C. § 78m(a).

14. (a) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or permit the use of his name to solicit any proxy or consent or authorization in respect of any security

(other than an exempted security) registered pursuant to section 12 of this chapter.

Act of June 6, 1934, c. 404 § 14, 48 Stat. 895; Aug. 20, 1964, Pub.L. 88-467, § 5, 78 Stat. 569, 15 U.S.C. § 78n(a).

15. (b)(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer, if it finds that such censure, denial, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

. . .

(D) has willfully violated any provision of the Securities Act of 1933, or of the Investment Advisers Act of 1940, or of the Investment Company Act of 1940, or of this chapter, or of any rule or regulation under any of such statutes.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, or the Investment Advisers Act of 1940, or the Investment Company Act of 1940, or of this chapter, or of any rule or regulation under any of such statutes, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. . . .

Act of June 6, 1934, c. 404, § 15, 48 Stat. 895; May 27, 1936, c. 462, § 3, 49 Stat. 1377; Aug. 20, 1964, Pub.L. 88-467, § 6, 78 Stat. 570-574, 15 U.S.C. § 78*o*(b)(5). Since amended and recodified as section 15(b)(4), Act of June 4, 1975, Pub.L. 94-29, § 11, 89 Stat. 121, 15 U.S.C. § 78*o*(b)(5).

15. (b)(6) Pending final determination whether any registration under this subsection shall be denied, the Commission may by order postpone the effective date of such registration for a period not to exceed fifteen days, but if, after appropriate notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, the Commission shall so order. Pending final determination whether any such registration shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors. . . .

Act of June 6, 1934, c. 404, § 15, 48 Stat. 895; May 27, 1936, c. 462, § 3, 49 Stat. 1377; Aug. 20, 1964, Pub.L. 88-467, § 6, 78 Stat. 570-574, 15 U.S.C. § 78*o*(b)(5). Since amended, Act of June 4, 1975, Pub.L. 94-29, § 11, 89 Stat. 121, 15 U.S.C. § 78*o*(b)(6).

15. (d) Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission in accord-

ance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this chapter in respect of a security registered pursuant to section 12 of this chapter. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this chapter. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. For the purposes of this section, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

Act of June 6, 1934, c. 404, § 15, 48 Stat. 895; May 23, 1936, c. 462, § 3, 49 Stat. 1377; Aug. 20, 1964, Pub.L. 88-467, § 6, 78 Stat. 570-574, 15 U.S.C. § 78*o*(b).

16. (a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this chapter, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities

exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this chapter, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

Act of June 6, 1934, c. 404, § 16, 48 Stat. 896; Aug. 20, 1964, Pub.L. 88-467, § 8, 78 Stat. 579, 15 U.S.C. § 78p(a).

19. (a) The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors—

(1) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to withdraw the registration of a national securities exchange if the Commission finds that such exchange has violated any provision of this chapter or of the rules and regulations thereunder or has failed to enforce, so far as is within its power, compliance therewith by a member or by an issuer of a security registered thereon.

(2) After appropriate notice and opportunity for hearing, by order to deny, to suspend the effective date of, to suspend for a period not exceeding twelve

months or to withdraw, the registration of a security if the Commission finds that the issuer of such security has failed to comply with any provision of this chapter or of the rules and regulations thereunder.

(3) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a national securities exchange any member of [*sic;* or] officer thereof whom [*sic*] the Commission finds has violated any provision of this chapter or of the rules and regulations thereunder, or has effected a transaction for any other person who, he has reason to believe, is violating in respect of such transaction any provision of this chapter or the rules and regulations thereunder.

(4) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days.

Act of June 6, 1934, c. 404, § 19, 48 Stat. 898, 15 U.S.C. § 78s(a). Subsequently recodified and amended, Act of June 4, 1975, Pub.L. 94-29, § 9, 89 Stat. 118, 15 U.S.C. § 78s(a).

21. (d). Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member,

the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

Formerly subsection (e). Act of June 6, 1934, c. 404, § 21, 48 Stat. 899; June 25, 1936, c. 804, 49 Stat. 1921. Amended and recodified as subsection (d), Act of June 4, 1975, Pub.L. 94-29, § 17, 89 Stat. 154, 15 U.S.C. § 78u(b).

25. (a)(1) A person aggrieved by a final order of the Commission entered pursuant to this chapter may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.

. . .

(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

Act of June 6, 1934, c. 404, § 25, 48 Stat. 901; June 7, 1934, c. 426, 48 Stat. 926; May 24, 1949, c. 139, § 127, 63 Stat. 107; June 4, 1975, Pub.L. 94-29, § 20, 89 Stat. 158, 15 U.S.C. § 78y(a).

Rule 12b-25. Extension of Time for Furnishing Information.

NOTE: The disclosures required in reports filed with the Commission are essential to the preservation of free, fair and informed securities markets. It is of critical importance that such reports be furnished within the time they are required to be filed under the Commission's rules. Only the most compelling and unexpected circumstances justify a delay in the filing of a report and the dissemination to the public of the factual information called for therein.

(a) If any required information, document or report . . . cannot, without unreasonable effort or expense be furnished within the time it is required to be filed, the registrant shall, as soon as possible, but no later than the last day of the specified period, file with the Commission, an application on Form 12b-25 for an extension of time of not more than 30 days furnishing the

information called for by all items of the Form. One additional extension of not more than 30 days also may be applied for in the same manner as the initial application.

17 CFR § 240.12b-25.

No. 76-1607

IN THE

Supreme Court of the United States

October Term 1977

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

SAMUEL H. SLOAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

Canadian Javelin Limited ("Javelin") respectfully moves, pursuant to Rule 42(2) of this Court's Rules, for leave to file a brief *amicus curiae* in support of affirmance. The written consents of the Solicitor General on behalf of Petitioner, and of the Respondent, have been obtained and are annexed hereto. The motion appears to be required because the filing of the *amicus* brief may technically not be timely since no formal extension of the respondent's time to file his brief has been obtained, and the *amicus*

brief is required to be filed "within the time allowed for the filing of the brief of the party supported." *

CONCLUSION

Canadian Javelin Limited Respectfully Prays That Its Motions Pursuant To Rule 42(2) For Leave To File A Brief *Amicus Curiae* Out Of Time.

Respectfully submitted,

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* On or about December 19, 1977 Javelin's counsel learned that the Solicitor General had filed the Government's brief in this case on or about December 13, 1977 (service of which was received by respondent on or about December 17, 1977). On or about December 21, 1977, Javelin's counsel obtained the verbal consent (subsequently confirmed in writing) of the parties hereto to the filing of a brief *amicus curiae*.

Also in late December, 1977, the Solicitor General sent a copy of his brief to Javelin's counsel, and respondent later supplied counsel with a copy of the Appendix, briefs in the Court below, and briefs exchanged in a prior dispute involving the same issues and reported in *Sloan* v. *SEC*, 527 F.2d 12 (2d Cir. 1975), *cert. denied*, 426 U.S. 535. The documents so delivered were extensive and digesting them consumed considerable time.

On or about January 12, 1978, counsel for Javelin wrote to the Clerk of the Court requesting an extension of time to file the *amicus* brief to January 31, 1978, and conveying respondent's oral request to extend his time to January 31. On January 18, 1978, the Clerk informed respondent that Javelin's counsel lacked standing to request an extension of time on respondent's behalf, and informed Javelin's counsel by letter that there was no provision for extending an *amicus's* time to file. Under the Court's Rules, the *amicus's* time is derivatively related to the time of the party he is supporting.

No. 76-1607

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

SAMUEL H. SLOAN,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR CANADIAN JAVELIN LIMITED, *AMICUS CURIAE*

Preliminary Statement

Canadian Javelin Limited ("Javelin"), respectfully submits this brief *amicus curiae* in support of affirmance of the decision of the United States Court of Appeals for the Second Circuit, reported in *Sloan* v. *SEC*, 547 F.2d 152 (2d Cir. 1976), declaring unlawful the practice of the Petitioner ("Commission" or "SEC") of instituting successive summary ten-day suspensions of trading in (Javelin's) securities, and directing the Commission to discontinue the practice.[1]

[1] Both the respondent (Brief in Opposition, pp. 30-31), and the Government ("Reply Memorandum" in support of Certiorari,

The decision under review in terms relates to a series of thirty-seven consecutive orders each of which summarily suspended trading in the common stock of Javelin for a ten day period. This series of ten-day orders resulted in a continuous suspension of trading from April 29, 1975 to May 2, 1976. An earlier series of forty-two ten-day suspensions had run continuously from November 29, 1973 to January 26, 1975. *Sloan* v. *SEC*, 527 F.2d 11 (2d Cir. 1975), *cert. den.*, 426 U.S. 935 (1976).[2]

The Government claims (Brief, p. 5, #3) that the first series of suspensions was instituted because Javelin "appeared to have disseminated false and misleading press releases concerning its business activities," [3] and the second series was instituted because (Brief, pp. 3-5)

> "the Royal Canadian Mounted Police had commenced an extensive investigation into alleged manipulation of

passim), agree that the effect of the decision below was to enjoin the Commission in all cases from resorting to its practice of instituting consecutive summary ten-day suspensions of trading. The Government contends that in this respect the Court below exceeded its statutory authority under section 25 of the Securities Exchange Act of 1934, 15 U.S.C. § 78y, ("the Exchange Act").

[2] Although the second series of suspensions was in force when the Court below dismissed the first petition for review—partly because of the SEC's willingness to give respondent some sort of hearing—on the second petition the SEC argued in the Court below (Brief, p. 2 nt. 1) that only the individual orders entered within sixty days of the filing of the petition were before the Court because of the sixty day requirement for filing a petition for review contained in section 25 of the Act, 15 U.S.C. § 78y. In speaking of the thirty-seven consecutive ten-day suspensions, the Court below implicitly rejected the Commission's argument.

[3] The challenged reports related to a " 'purported development of Panamanian mineral properties' (App. 109)" (Brief, p. 7). Despite the Commission's skepticism as to Javelin's claims that it had found a large copper deposit in Panama, the Panamanian Government subsequently expropriated Javelin's "purported" properties, paying a subsidiary of Javelin approximately $23.5 million in cash and Panamanian Government bonds.

> CJL common stock on the American Stock Exchange and several Canadian stock exchanges."

The Government says that the Commission immediately began its own investigation of the RCMP's "wash trading" charges and that on April 26, 1976 (nearly a year later) it filed a complaint on account thereof in the Southern District of New York. It adds that "Once the public had an opportunity to become familiar with these allegations, the Commission permitted trading in CPL stock to resume." [4]

With respect to both series of suspensions the Commission purports to have acted under what is now section 12(k) of the Exchange Act, as amended, 15 U.S.C. § 78*l*(k) (formerly section 19(a)(4), 15 U.S.C. § 78s(a)(4) (1971)). Each series of suspensions was terminated by the Commission before the Court of Appeals had heard argument on the petition for review directed to it. The Government now argues that because all suspensions were terminated before the second petition for review was argued below the case is moot as to respondent.

On the merits the Government argues that despite the limiting language of section 12(k) of the Act (and of its predecessor)—permitting a summary suspension "for a period *not exceeding* ten days"—and despite a stated congressional "expect[ation]" that the Commission would resort to alternative statutory procedures permitting longer suspensions after notice and a hearing on the record,

[4] This is not strictly accurate. The American Stock Exchange ("AMEX") instituted its own trading halts and suspensions in Javelin's stock which have remained continuously in effect to date since April 30, 1975, before the termination of the SEC's second series of suspensions on May 2, 1976. Moreover, the record discloses an actual agreement by the AMEX to keep trading in Javelin's stock suspended until the Commission agreed to a resumption of trading (App. 22, 24, 26, 28-29, 31).

the Commission is free to institute successive ten day summary suspensions so long as it "make[s] a fresh determination every ten days [that the public interest and protection of investors requires it] as a prerequisite to the issuance of a successive order" (Brief, p. 10-11). Implicity the Court is asked to infer that the "fresh determination" requirement has been satisfied because each of the mimeographd suspension order forms contains the statutory language "public interest and protection of investors."

Summary of Argument

This proceeding is not moot. A government agency cannot preclude judicial review of its allegedly unlawful conduct by temporarily and unilaterally terminating the challenged activity during the pendency of the judicial review proceedings, all the while maintaining the legality of its conduct and asserting its intention to continue it thereafter. Moreover, the challenged practice was actually in effect when the issue came before the Court below, and appears to have been terminated by the Commission only because of the earlier petition for certiorari in this Court, 426 U.S. 935 (denied June 14, 1976), and the renewed petition for review before the Second Circuit (see *post*, pp. 13-15).

On the merits, the Court should reject the Commission's defense of its practice of instituting consecutive summary suspensions. The practice is justified only by a perverse reading of the statute and its legislative history, and primarily upon a plea of necessity—the Government arguing that the Commission's resort to summary suspensions is required by the "public interest and protection of investors" because other statutory remedies are inadequate. In making this argument, the Government unduly de-

nigrates the efficacy of the Commission's statutory power to impose longer-term suspensions after hearing,[5] and wholly ignores the availability of the injunction remedy to which the Commission regularly resorts. Moreover, such an argument is more properly addressed to the Congress than to the courts.

Finally, the Court should reject the Government's tendentious argument that Congress must be presumed to have approved the Commission's practice of instituting consecutive summary suspensions of trading based upon its imputed but illusory knowledge of the practice.

In Point III we suggest that the cases which have held that the statutory language "the public interest" and "the protection of investors" is not an unconstitutional delegation of legislative power did so in the context of defining an agency's rule-making power, or in circumstances in which the statute itself specifically defined congressional policy or required the utilization of the agency's expertise. As used in connection with section 12(k), the language is too ephemeral to warrant what amounts to punitive action in the complete absence of statutory standards, and power so assumed by the Commission has been used by it in an impermissibly arbitrary and capricious fashion.

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[5] Part of the Government's argument is that the longer suspension power, after hearing, applies only to "issuer misconduct." In the portion of its Brief dealing with the inadequacy of its suspension power under § 12(j) (Brief, p. 30 and nt. 11) the Government suggests that the section would not have been available as to the second series of suspensions relating to alleged third-person manipulations because of the absence of "issuer misconduct." In the part of the Brief dealing with mootness, however, we are told that this series of suspensions was lifted once there had been disclosure of "issuer misconduct" (Brief, p. 15, Petition, p. 12, nt. 7).

POINT I

The Controversy Was Not Mooted By The Commission's Unilateral Lifting Of The Challenged Suspension While Asserting Its Right To Enter Such Suspensions At Will.

Respondent's first appeal to the Second Circuit was dismissed, without prejudice to his repleading, because at the time that appeal was heard the first series of ten day suspensions had been lifted by the Commission. Although the second series of suspensions was then in effect, the Court of Appeals noted, 527 F.2d at 12, that the record before it was virtually non-existent and said that:

> "We consider [respondent's] blunderbuss attack frivolous except for his allegation that the 'tacking' of ten-day summary suspension orders by the SEC for an indefinite period constitutes an abuse of that agency's authority and a deprivation of due process. Apparently this question has never been judicially considered and would seem not to be frivolous; see 2 L. Loss, Securities Regulation 854-55 (2d ed. 1961). We cannot decide it on the record before us. The record is entirely silent as to the reasons for the second series of suspensions, commencing in April of this year; we cannot tell whether they are based on substantial evidence, and hence cannot decide if they amount to an abuse of discretion by the SEC. Sloan's pleadings also cover only the *first* series of suspensions, which now have terminated. It may be that Sloan intends to challenge the series of suspensions currently in effect as well. Moreover there was no hearing (or any other proceeding) below before the SEC itself; in fact, there was at the time no formal statutory provision for any such proceeding involving suspension orders. Nonetheless, the SEC on this appeal has indicated that it is willing in fact to grant Sloan some sort of administrative hearing, thus satisfying any possible exhaustion argument, while also contributing to the record we now find insurmountably sparce.
>
> "We therefore dismiss Sloan's appeal but without prejudice to his repleading after an administrative hearing before the SEC, from which judicial review may be sought." [6]

By the time the second petition for review was heard below, the Commission had terminated its second series of suspensions and argued below that the controversy was moot.[7] In rejecting the Commission's argument the Court below said, 547 F.2d at 158:

> "The petitioner claims that he has suffered great loss and damage because the suspension orders frustrated his trade in CJL stock, including short sales, and that each succeeding ten-day suspension expired before he could seek a legal review of the validity of the order. Because of the SEC's continuing policy of roll-over, ten-day suspension orders, the harm to him was 'capable of repetition yet evading review.' *Southern*

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[6] However, given the scant record, there was no reason to "dismiss" the petition for review, rather than vacating the order of the Commission or simply remanding for the promised hearing, *cf.*, *Collins Securities Corp.* v. *SEC*, —— F.2d ——, CCH Sec.L.Rep. ¶ 96,122 (App.D.C. 1977); *Nasser & Co.* v. *SEC*, —— F.2d ——, CCH Sec.L.Rep. ¶ 96,185, at p. 92,343 (App.D.C. 1977). Such procedure is expressly contemplated by section 25(a)(5) of the Exchange Act, 15 U.S.C. § 78y(a)(5). Had this procedure been followed the so-called "second" appeal would clearly be seen to be but a continuation of the original controversy, rendering the mootness argument untenable.

[7] As noted above (p. 3, nt. 4), the AMEX suspension has continued in effect to date by agreement with the Commission.

Pacific Terminal Co. v. *ICC*, 219 U.S. 498, . . . (1911); *Sosna* v. *Iowa*, 419 U.S. 393 . . . (1975). See also *Weinstein* v. *Bradford*, 423 U.S. 147, . . . (1975).

"This petition for review was filed before the expiration of the last ten-day suspension of the second series now before us for consideration. Moreover the petitioner had raised the question before this court in connection with its October 15, 1975 decision and again before the SEC in connection with the present case. We declare that the successive roll-over ten-day suspension procedure erroneously adopted by the SEC was improperly pursued and was contrary to the statutory provisions for summary suspensions in force April 30, 1975 to May 2, 1976. The issue of statutory construction and interpretation never became moot and has been ruled upon in this review. The SEC is, therefore, directed to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading in a security for an extended period, i.e. in excess of ten days."

The Government contends (Brief, p. 15, Petition pp. 11-12) that the Second Circuit mistakenly invoked the "capable of repetition, yet evading review" doctrine. Quoting from *Weinstein* v. *Bradford*, 423 U.S. 147, 149 (1975), it argues that the doctrine applies *only* where:

> "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again."

By focusing solely on the second series of suspensions, the Government is able to argue (pp. 16-20) that there is scant mathematical likelihood that respondent will ever again own a security in which trading has been summarily suspended.[8]

In fact, the dismissal of respondent's first petition for review was without prejudice to his challenging *the practice* of summary suspensions, the Court below recognizing that a second series of suspensions was then in effect although neither mentioned in respondent's petition nor supported by any administrative record. Had the Court below permitted an amendment to respondent's first petition for review, or directed a remand instead of dismissing, the very existence of the second series of suspensions would, as the Court below implicitly recognized, have satisfied the need to show "a reasonable expectation that [respondent] would be subjected to the same action again,"[9] thus making a mootness argument untenable.

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[8] Its stress on respondent's *present holdings* ignores the fact that respondent's primary complaint was not as an owner of 13 shares of Javelin, but as a frustrated "short seller" of its stock, unable to "cover" his sales at a profit, 527 F.2d at 12, and *id.*, nt. 2; 547 F.2d at 158. Since Respondent could be "short" at the time the SEC suspends trading in the future with respect to any security which he does not now own, the government's mathematical probability argument (Brief, p. 19, and nt. 8) is irrelevant.

[9] Recognizing this, the SEC's Petition for Rehearing of the decision under review suggested below that the second panel's decision was inconsistent with the first panel's decision dismissing respondent's original petition for review. The Commission argued (Petition, p. 8) that

> "Had the panel of the court deciding that case been of the view that the Commission had no power to order anything more than a single ten day summary trading suspension, there would have been no need for it to have had a record to determine the 'reasons' for the successive suspensions."

Of course the second panel of the Second Circuit cannot be assumed to have condemned *any* repetition of a ten day suspension, particularly since, as we show below (pp. 21-22, 32-34), there are circumstances warranting the entry of successive suspensions. What the Court below condemned was the rote renewal of suspensions over a long period, justified only by a talismanic invocation of the statutory language.

(a) Mootness does not result from a defendant's unilateral termination of unlawful activities, particularly where it claims the activities to be proper

The Government's attempt to convert the principle of mootness articulated in *Weinstein* v. *Bradford, supra,* and properly derived from the facts of that case, into an all inclusive definition of mootness must be rejected. The mootness doctrine evolved from the provision of Article III of the Constitution limiting federal jurisdiction only to "cases and controversies," and requires that a "case or controversy" exist not merely when the action is commenced but also when it is argued and decided either by a court of appeals or by this Court. *Sosna* v. *Iowa,* 419 U.S. 393, 402 (1975); *DeFunis* v. *Odegaard,* 416 U.S. 312, 318-19 (1974). However, as this Court confirmed in *Nebraska Press Ass'n.* v. *Stuart,* 427 U.S. 539, 546 (1976), a case does not become moot "simply because the order attacked has expired, if the underlying dispute between the parties is 'capable of repetition, yet evading review.'"

Primary among the principles governing the application of the mootness doctrine is that

> "voluntary cessation of allegedly illegal conduct does not . . . make the case moot. . . . For to say that the case has become moot means the defendant is entitled to a dismissal as a matter of right."

United States v. *W. T. Grant Co.,* 345 U.S. 629, 632-33 (1953). In *Grant* this Court overruled a finding of mootness based upon the defendants' unilateral termination of the challenged interlocking directorates (while sustaining the denial of an injunction on other grounds).

Similarly, in *Sibron* v. *New York,* 392 U.S. 40, 52-53 (1968), the Court rejected a suggestion of "mootness" in

the appeal of a criminal conviction where defendant had been incarcerated and released after completing his sentence:

> "Many deep and abiding constitutional problems are encountered primarily at a level of 'low visibility' in the criminal process—in the context of prosecutions of 'minor' offenses which carry only short sentences. We do not believe that the Constitution contemplates that people deprived of constitutional rights at this level should be left utterly remediless and defenseless against repetitions of unconstitutional conduct. A State may not cut off federal review of whole classes of such cases by the simple expedient of a blanket denial of bail pending appeal. . . . [A] State may not effectively deny a convict access to its appellate courts until he has been released and then argue that his case has been mooted by his failure to do what it alone prevented him from doing." [10]

As we shall show below (pp. 13-15, 16-18), any abatement of the present controversy could result solely from the Commission's evidently conscious effort to render it moot.

Nor is this case moot under the principle of *DeFunis* v. *Odegaard,* 416 U.S. 312, 319 (1974), in which this Court dismissed an appeal challenging reverse discrimination in the law school of the State of Washington because the petitioner was in his last term of school and respondents had represented that regardless of how this Court decided the appeal petitioner would be permitted to complete the

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[10] *Sibron* is not inconsistent with *Weinstein,* because Sibron's interest in establishing that he had been wrongfully convicted, *i.e.,* that he was not an ex-convict, persisted notwithstanding that he had served his short sentence. In *Weinstein* respondent, being at liberty, could have no constitutional interest in the manner in which North Carolina's parole system was being conducted.

term and graduate, in accordance with another established school policy. A majority of this Court held the controversy moot because:

> ". . . Defunis will never again be required to run the gantlet of the Law School's admission process, and so the question is certainly not 'capable of repetition' so far as he is concerned."

Dissenting from the dismissal for mootness, Mr. Justice Brennan, joined by Justices Douglas and Marshall, wrote, 416 U.S. at 348-49, that respondents could not, by their concession, render the controversy moot, particularly since they maintained the correctness of their position:

> "In these circumstances, and because the University's position implies no concession that its admissions policy is unlawful, this controversy falls squarely within the Court's long line of decisions holding that the '[m]ere voluntary cessation of allegedly illegal conduct does not moot a case.' . . . Since respondents' voluntary representation to this Court is only that they will permit petitioner to complete this term's studies, respondents have not borne the 'heavy burden,' . . . of demonstrating that there was not even a 'mere possibility' that petitioner would once again be subject to the challenged admissions policy. . . . On the contrary, respondents have positioned themselves so as to be 'free to return to [their] old ways.' . . ."

Under the majority's decision the present controversy is not moot since, unlike *De Funis*, neither respondent nor Javelin has the slightest realistic hope of "never again being required to run the gantlet" of the challenged practice, Javelin being one of the Commission's favorite targets, and respondent apparently being a congenital speculator

likely to be speculating with securities subject to suspensions. The majority found *De Funis* moot because a school policy other than that under attack would virtually assure De Funis's graduation, so that the case resembles *SEC* v. *Medical Committee for Human Rights,* 404 U.S. 403 (1972).[11] The dissenters' position of course sustains the continuing controversy here. Moreover, Mr. Justice Brennan's dissenting opinion in *DeFunis* recognizes that the burden of showing mootness rests with the party arguing mootness and also gives a negative weight to the respondent's intransigent claim of right. Manifestly this bodes ill for the Government's present claim of mootness.

(b) Respondent's claim is not moot because the Commission manifestly terminated the suspensions in order to frustrate pending judicial proceedings challenging the practice

The Government argues (Brief p. 16) "that the case became moot once trading in CJL stock was permitted to resume." As we have noted above, that argument could as readily have been made with respect to the first series of suspensions although the second series was in effect when the case reached the Court of Appeals. Moreover, an examination of the facts makes it clear beyond cavil that the Commission's termination of the second series of suspensions itself appears to have been calculated to frustrate judicial review of the practice.

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[11] In *Medical Committee* the Company submitted the stockholder proposal to a vote and, under a different Proxy Rule, the lack of stockholder support entitled it to ignore petitioner's request for the following three years. In *Mancusi* v. *Stubbs,* 408 U.S. 204, 206 nt. 1 (1972), *Medical Committee* was explained as having become moot

> "not because of compliance by the S.E.C. with the judgment under review, but because of the action of Dow Chemical which was not required to do anything by that judgment."

Respondent's first petition for review was denied without prejudice by the Court below on October 15, 1975. *Sloan* v. *SEC*, 527 F.2d 11 (2d Cir. 1975). His initial demand for the promised administrative hearing was rejected for lack of verification and for other unspecified technical inadequacies, *Sloan* v. *SEC*, 547 F.2d at 156, and his renewed request to the Commission was filed on March 11, and denied by the Commission (as was a hearing) on April 21, 1976. On the same day it entered the thirty-seventh consecutive ten-day suspension order in this series, *ibid.*

On April 19, 1976 Sloan had filed his petition for certiorari to review the Second Circuit's dismissal of his "first" petition for review, and on April 23, 1976, during the pendency of the thirty-seventh suspension, respondent filed his "second" petition for review in the Court of Appeals.[12]

When the thirty-seventh suspension expired on May 2, 1976 it was not renewed, the decision allegedly having been made (Brief, pp. 4-5), solely because on April 26, 1976 the Commission had filed its wash trading complaint

[12] On April 22, 1976, the day following the entry of the thirty-seventh suspension of trading in Javelin's stock, the Commission summarily suspended trading in thirty-four other securities, Exchange Act Rel. No. 12,360 (Apr. 22, 1976). However, prior to the filing of the Government's Brief in Opposition on May 30, 1976, the Commission had lifted all but two existing suspensions of trading—those in securities of the successor to Equity Funding Corporation, and in Continental Vending Machines Corp. (which had been under continuous summary suspensions for thirteen years and three months, since March 8, 1963!), and even the latter suspension was lifted on June 2, 1976 (*see Wall Street Journal*, June 3, 1976, cf., App. 189). Thus the Brief in Opposition was to say (p. 2) that one of the questions before the Court was "Whether the foregoing issues have become moot because no order summarily suspending trading is any longer in effect." Certiorari was denied on June 14, 1976, 426 U.S. 935.

in the Southern District of New York, and "Once the public had had an opportunity to become familiar with these allegations, the Commission permitted trading in CJL stock to resume." This contention does not ring true, particularly since the Commission did not lift the first series of suspensions despite the public's having "had an opportunity to become familiar" with its charges.[13] Moreover, the SEC apparently knew as early as April 23, 1976 that the suspension would not be renewed upon its expiration.[14]

In refusing to grant respondent's petition for review in April 1976, the Commission assigned two additional reasons for continuing the suspensions of trading in Javelin's stock. One of these was that "a number of private civil suits are pending in Canada involving a dispute regarding control of the company" (Brief, p. 8), and the other was that "CJL was 'delinquent with respect to the filing of its 10-K report' (App. 110)" (*id.*, nt. 5). Both of these situations, which allegedly warranted a reimposition of a suspension on April 21, 1976, continued in effect on May 2, 1976, when the suspension expired and was not renewed.

[13] The first series of suspensions was not terminated in 1973 when the Commission filed its complaint or even after the consent decree was entered on July 17, 1974 (Brief, p. 7 nt. 4), after disclosure of "issuer misconduct." The summary suspensions continued for six more months, to January 26, 1975.

[14] Sloan stated below, (Dkt. 76-4110 (2d Cir.), Brief, p. 6) that when he filed his "second" petition for review he also moved by order to show cause to stay the existing suspension of trading and to expedite the appeal, and that that order was frustrated by an *ex parte* telephone call from an SEC attorney to the Court of Appeals Clerk, advising the Clerk that the pending suspension would not be renewed upon its expiration on May 2, 1976. We obviously are not in a position to verify this assertion, which, if true, would bolster our view that the termination of the suspensions was dictated solely by litigation necessities—including the plea of mootness—and had nothing to do with the public interest or the protection of investors.

The contest for control of Javelin's management was not resolved until July 30, 1976 (and even then was subject to appeals in the Canadian courts in which the Commission itself attempted to participate through a nominee),[15] while the delinquency in filing the Form 10-K continued until December 1976. The Commission did not regard these as inconsequential facts. (See *post*, p. 26 nt.)

These is a further indication that the Commission's lifting of the trading suspensinons was motivated only by a desire to preclude judicial review of the practice. On November 8, 1976, when the Commission did finally get around to suing Javelin for "remedial" injunctive relief on account of its "delinquent" filings, it did not follow its routine practice of simultaneously suspending trading in the securities of the issuer so sued. Had it done so, it would have made a shambles of the mootness argument it had made in the Court of Appeals while the second petition for review was actually *sub judice*. Argument had been heard on October 13, 1976, only three weeks before the filing of the District of Columbia complaint, and decision was not had until November 18, 1976 (subject to revision on reargument on December 27, 1976).

Had the Commission followed its normal procedure of simultaneously suspending trading, the Court of Appeals would have had to have been advised that a new series of suspensions was in effect, at a time when the petition for review had already been argued and was awaiting decision, and it would have been obvious that there was no merit whatever to the Commission's contention that

[15] On the issue of control, the SEC actually induced Judge MacMahon of the Southern District of New York, who had in 1974 entered the consent injunction referred to in the Government's Brief (p. 7, nt. 4), to designate Javelin's Special Compliance Counsel under that injunction to intervene in Canadian court proceedings in opposition to the seating of the present management.

respondent is unlikely once more to "be subjected to consecutive orders suspending trading within the foreseeable future."

The question is whether the Commission is capable of or likely to engage in the underhandedness and intellectual dishonesty which our arguments imply. Unfortunately, as is readily demonstrated by the comments of judges in a number of recent cases, it is clear that the Commission regularly does resort to dubious tactics more attuned to winning cases by any means than to serving the interests of justice or elucidating the law. The classic condemnation of the Commission's partisan tactics is found in many of the opinions in *SEC* v. *Great American Industries, Inc.*, 407 F.2d 453, 455 (2d Cir. *en banc*, 1968), *and see*, Moore, *J.*, dissenting, *id.*, at 480-81.

Among the more recent judicial rebukes is Judge Werker's unreserved condemnation of the Commission's dissimulation as *amicus* in *Byrnes* v. *Faulkner, Dawkins & Sullivan*, 413 F.Supp. 453, 471 nt. 26 (S.D.N.Y. 1976), *aff'd, other grds*, 550 F.2d 1310 (2d Cir. 1977). Similarly, Judge Haight was emphatic in his condemnation of the conduct of two members of the Enforcement Staff in intentionally misleading defense counsel in *United States* v. *Fields*, —— F.Supp. ——, CCH Sec.L.Rep. ¶ 96,074 (S.D.N.Y. 1977). And, Judge Edward Weinfeld condemned both the Commission's Staff and defense counsel for their lack of forthrightness in representing to the Court that there had been agreement on the terms of a settlement, and condemned the Commission's unprincipled effort thereafter retroactively to change the terms of a consent decree. *SEC* v. *General Host Corp.*, —— F.Supp. ——, CCH Sec. L.Rep. ¶ 96,154, at pp. 92,215-16 (S.D.N.Y. 1977).

The *amicus* respectfully submits that the termination of the second series of suspensions was not a coincidence but

manifestly was timed to preserve the mootness argument, which was and is sham.[16] The Court below correctly held that the controversy was not mooted by the Commission's unilateral termination of the second series of summary suspensions, and its decision on the point should be affirmed.

POINT II

The Court Below Correctly Held That The Commission Exceeded Its Statutory Authority By Routinely Imposing Consecutive Summary Suspensions Of Trading.

The Government argues that the Court of Appeals erred in holding on the merits that section 12(k) of the Exchange Act, 15 U.S.C. § 78*l*(k), forbids successive ten-day suspensions in trading. In pertinent part the statute provides:

> "If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days . . . No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

Necessarily the decision below relied heavily upon the statutory language authorizing summary suspensions of trading "for a period not exceeding ten days," the Court also being influenced by the existence of an alternative suspension power under section 12(j) of the Exchange Act, 15 U.S.C. §78*l*(j).

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[16] Our criticism of the Commission is not intended in any way to reflect upon the integrity of the Solicitor General or his Office.

The Government's disagreement with the Court of Appeals largely depends upon its own construction of section 12(k) itself; upon the asserted insufficiency of alternative remedies; upon the assumed acquiescence of Congress in the challenged practice; and upon a collection of imagined evils which it says will flow from the decision below. Upon analysis, none of these reasons warrants a reversal by this Court.

(a) Section 12(k) cannot be tortured into authorizing successive suspension orders for a single violation or condition

The Commission's statutory construction argument is capsulized at page 21 of its Brief:

> "Section 12(k) . . . affirmatively grants to the Commission authority to suspend trading in individual securities. For the purposes of the present discussion, the only relevant limitations the statute places on that authority are (1) that, before an order to suspend trading is issued, the Commission must determine that the suspension is required by the public interest and the protection of investors, and (2) that any single order may remain in effect for not more than ten days. These two limitations do not bar the Commission from issuing a new suspension order upon the expiration of an earlier order. They necessitate only that, as a prerequisite to the issuance of a successive suspension order, the Commission reassess the circumstances pertaining to the security and make a fresh determination of what the public interest and the protection of investors require."

To avoid the inhibitory language "for a period not exceeding ten days," the Government engages in a remarkable syllogism (pp. 22-23). It argues that the quoted lan-

guage obviously could not prevent the Commission from issuing a second ten-day suspension order on new evidence of manipulation occurring a month after the termination of an earlier summary suspension order, so that the language

> "'for a period not exceeding ten days' therefore can only be read as limiting the duration of a single suspension order, not as limiting the amount of time that a particular security may be subject to suspension of trading."

This step leads the Government to the next—that if a second manipulative scheme were uncovered during the first suspension, "No statutory purpose would be served by requiring an intervening period during which trading would resume." The second step inevitably leads to the third, which is, however, a complete *non sequitur*:

> "nothing in the statute compels the Commission to consider only new evidence in evaluating the needs of the investing public. To the contrary, it is consistent with the statute for the Commission, even in the absence of new evidence of fresh manipulative activity, to determine that existing conditions are such that the public interest and the protection of investors require a renewed suspension of trading.
>
> "In short, the statutory language does not bar successive suspension orders at all. It requires only that the Commission make a new determination of the public interest, and of the needs of investors, before issuing a successive order suspending trading for a further ten-day period."

This entire argument is rendered untenable by the fallacious assumption that "the public interest and protection

of investors," which Congress made the touchstone for imposing a suspension "for a period not exceeding ten days," may itself be invoked to ignore the express congressional limitation. Moreover the Government's argument wholly ignores the manifest fact that the summary suspension procedures were intended by Congress to be only an interim stopgap designed to enable the Commission to resort to more meaningful and permanent remedies, rather than the ultimate remedy of choice which it has become.

We agree with the first step of the Government's argument: a summary suspension order does not exhaust the Commission's authority to enter a later ten day order when there is evidence of a new violation or event which threatens an orderly market. Notably, a number of the events which the Commission has said warrant summary suspensions are, in their nature, of the sort which might be remedied by a single suspension, and thus not entail the rote reinstitution of successive summary suspension orders, which is the practice which the Court of Appeals condemned below.[17]

Similarly, the occurrence of an event independently warranting suspension shortly before the expiration of an unrelated suspension order would justify a renewed order.[18] However, that the entry of one ten day summary

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[17] Thus a "crisis type" situation (p. 25, item #1) might be followed a month or six weeks later by a rumor affecting the trading markets (p. 25, item #5), or by a request from the issuer for a suspension so that a public announcement can be made (*id.*, p. 31, nt. 12), or notification by a court of an impending decision likely to have an effect on the market price of a security (*ibid*). Each such occasion for summary suspension is one in its nature likely to have no long-lasting effect, and the remedy of a short summary suspension of trading accords with the statutory framework.

[18] For example, the "crisis type" (p. 25, item #1) might be followed by a "severe inadequacy of . . . financial information"

suspension does not exhaust the Commission's power to enter a second order, either after a short interval or at the expiration of the earlier order, scarcely gives the Commission free reign to issue a long string of ten-day suspensions upon the ritualistic "finding" that "the public interest and protection of investors" requires it. Some violations or events, by their nature, do not lend themselves to speedy disposition, and resorting to a protracted series of ten-day suspensions, save to buy time until more appropriate procedures can be initiated, is an abuse of the emergency character of the power granted by Congress.[19]

(p. 25, item #3). One can postulate that a listed issuer's president resigns on March 22, 1977 in suspicious circumstances. Before the expiration of the ten day suspension entered upon his resignation the issuer becomes delinquent in filing the Form 10-K Annual Report due on March 30, 1977. Since the delinquency itself does not occur until just before the expiration of the initial ten day suspension period, the issuer's failure to file the timely Form 10-K might also warrant a new ten-day suspension so as to enable the Commission to sue for an injunction or to commence proceedings under section 12(j).

[19] The fact that the Commission has adopted an administrative procedure to give a semblance of due process to persons claiming to be aggrieved by summary suspension order (Brief, pp. 6-7, nt. 3, Exchange Act Release No. 12361, 41 Fed.Reg. 18290) is singularly unimpressive. By analogy to this Court's holding in *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 212-13 (1976), the Commission's regulations cannot expand the coverage (or supply missing constitutional prerequisites) of a statute. Secondly, the new administrative procedures themselves provide no standards, and when coupled with language like "the public interest and the protection of investors" are meaningless. Thus, the Commission might and doubtless would choose to credit the RCMP's unproved charge of manipulations in Canada as preempting respondent's showing of real and substantial damage to himself from the suspension, since obviously respondent is not in a position to negate the RCMP's charge so that "there is no genuine issue as to any material fact." That the new procedure is little more than a charade is demonstrated by the manner in which the Commission actually dealt with respondent's requests.

The Court of Appeals correctly held as a matter of statutory construction that the language "for a period not exceeding ten days" rendered unlawful the Commission's practice of rote reinstitution of summary suspension orders.

(b) The Commission's preference for summary suspensions over other alternative remedies does not authorize it to ignore the terms of the statute

The Government argues that the Court below improperly gave weight to the existence of the suspension remedy provided by section 12(j), and (Brief, p. 29) that "the court did not grasp the significant differences between these two statutory authorities . . ." This argument is based upon several inherent differences between sections 12(j) and 12(k).

Seeking to justify the Commission's repeated summary suspensions of Javelin's stock, the Government argues that section 12(j).

> "applies only to securities registered with the Commission, *i.e.*, securities traded on a national securities exchange or issued by corporations having assets of $1 million or more and 500 or more shareholders"

whereas section 12(k) applies to all securities traded in the over-the-counter market (Brief, pp. 29-30). However, Javelin's stock was at all times registered and listed on the AMEX, and subject to section 12(j), so that this purported justification for resorting to section 12(k) is inapplicable here.

The Government next argues that section 12(j) "may be invoked only where the Commission finds misconduct by the issuer," whereas trading may be suspended under section 12(k)

> "whenever the public interest and the protection of investors so require, including situations that involve no misconduct by the issuer, *e.g.*, in cases involving manipulation or fraud by third parties, in corporate crises, in situations where adequate financial information is unavailable and where markets have been disrupted by speculation based upon rumors of doubtful accuracy. In the latter situations, the Commission is without authority to act under Section 12(j): even when the disruptive conditions persist for more than ten days, suspension of trading under Section 12(k) remains the only effective protection immediately available to investors." (*Id.*, pp. 30-31).

Necessarily Congress must have knowingly incorporated the "issuer misconduct" requirement into section 12(j) and its predecessors. However, while this difference between the two provisions does exist, it evidently has no bearing on the Commission's choice of remedy in Javelin's case, demonstrating both that the Commission prefers to ignore section 12(j) and resort to summary suspensions, and that the Commission displays remarkable flexibility in its selective definitions of "issuer misconduct," depending upon the point it is seeking to make.[20]

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[20] As respects the first series of suspensions, there can be no question that what was charged was "issuer misconduct" since the Commission claimed that the series of forty-two summary suspensions was occasioned because Javelin "appeared to have disseminated false and misleading press releases concerning its business activities" relating to the "purported development of Panamanian mineral properties" (Brief, pp. 5, 7, App. 110). As to this series, therefore, § 12(j) or its predecessor was available and there was no justification for resorting to § 12(k).

As respects the second series of suspensions, dealing with claimed "wash trading," the Government waffles on the question of "issuer misconduct." As we have previously noted (*ante*, p. 5 nt. 5), in the portion of its Brief dealing with the inadequacy of its suspension power under § 12(j) (Brief, p. 30 and nt. 11) the Government suggests that the section would not have been available because of the lack of "issuer misconduct." Yet in the part of the Brief dealing with mootness, it claims that the second series of suspensions was terminated once there had been disclosure of "issuer misconduct" (Brief, p. 15, Petition, p. 12, nt. 7).

The Government next argues that unless section 12(k) is available to the Commission, section 12(j) is inadequate because there simply is insufficient time to obtain the determination "on the record after notice and opportunity for hearing" that the issuer has violated the Exchange Act or regulations thereunder (Brief, pp. 31-32), stating that "As a general rule, at least six months is required to hold a hearing" (*id.*, p. 32 nt. 13). That certainly would not be true in the case of a late filing since a violation consisting of a failure to file will be known at once.[21] Nor does the argument explain why the Commission cannot bring an injunction action — a remedy which it widely utilizes, frequently in disregard of known facts which render success problematical. The injunction remedy is wholly ignored in the Government's discussion of alternatives to summary suspensions.[22]

Only in passing—and then only by way of quoting from Professor Loss's treatise—does the Government mention the availability to the Commission of injunctive relief as another remedy not suffering from the alleged inadequacies of section 12(j) (Brief, p. 25):

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[21] By analogy to § 15(b)(6), 15 U.S.C. § 78*o*(b)(6), the due process requirement might be satisfied by "affidavits and oral arguments." Less violence would be done to the statute than is done by arbitrarily ignoring the statutory ten-day limitation on summary suspension.

[22] The Commission waited more than seven months to sue Javelin on account of the "delinquency" in filing its 1975 Form 10-K, *SEC* v. *Canadian Javelin Limited, et al.*, D.D.C. C.A.No. 76-2070 (filed November 8, 1976), and when it did sue it also sued as aiders and abettors officers, directors and stockholders who were out of power when the delinquencies first occurred, despite the fact that section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), makes officers, directors and stockholders of a registrant violators of the Act only if they "without just cause" "hinder, delay, or obstruct" the filing of a report.

> "(2) • • • [T]here is a group of cases in which the suspension was designed to prevent trading until the Commission might obtain appropriate injunctive relief, usually against fraud or manipulation or an unregistered distribution • • • ."

In fact the Commission's resort to injunctions has not been limited to claimed fraud or manipulation. Since November 1972 the Commission has regularly commenced actions seeking injunctive relief against issuers (and occasionally against their officers and/or directors), charging them solely with the violation consisting of late filing of periodic reports and arguing that injunctive relief is warranted regardless of the circumstances and without any need to show *scienter* or wilful disregard of the reporting obligations.[23] The self-evident virtue of such actions (since they can scarcely succeed in achieving their ostensible purpose of compelling an issuer to file a report if circumstances beyond the issuer's control have made a timely filing impossible) would seem to be that they swell the total number of injunction actions commenced—and successfully terminated (since historically most such actions have ended in default or consent judgments)—a factor evidently stressed in the Commission's budget requests to the Congress, but seemingly irrelevant to the statutory considerations of "the public interest and the protection of investors."

The Commission is seldom shy in asserting its right to injunctive relief. In its Reply Brief in the currently pending appeal to the Fourth Circuit in *SEC* v. *American Realty Trust*, Dkt. 77-1839 (p. 12n, nt. 18), it stated:

[23] By September, 1974, less than two years later, some forty-five such actions had been filed in the District of Columbia. *SEC* v. *First Wisconsin Mortgage Trust*, '74-'75 CCH Sec.L.Rep. ¶ 94,793, at p. 96,634 (D.D.C. 1974) (Gesell, *J.*). Almost invariably the filing of such a complaint has been accompanied by a simultaneous summary suspension of trading under section 12(k) (or its predecessor).

> "18. Defendants argue that the Commission should have brought an administrative proceeding against them, not an injunction action (Def. Br. 44-48). This argument ignores not only the discretion reposed in the Commission to enforce the federal securities laws but also the express statutory authority of the Commission to institute an injunctive action whenever it appears to it that a violation of the federal securities laws is occurring or is about to occur. . . . The defendants suggest that the courts, in determining if an injunction is appropriate, should consider whether other discretionary remedies are available to the Commission (Def. Br. 47) and the purported significant collateral consequences of an injunction (Def. Br. 49). This argument not only suggests that the courts should interfere in the Commission's internal decision-making process, but also that the courts are free to disregard the intent of Congress, as expressed in the statute. . . .
>
> "Moreover, this injunctive action, unlike an administrative proceeding, was not brought to correct filings with the Commission nor to assure that future filings with it would be technically correct *but* to enjoin ART and Broyhill from again offering and selling securities to the public or filing reports or soliciting proxies without full disclosure in accordance with the requirements of the acts." [24]

Much of the Commission's effort to justify its resort to consecutive summary suspensions is premised upon the contention that if it is unable to use section 12(k) as it has been using it, it will be unable effectively to execute its

[24] In *SEC* v. *American Realty Trust*, 429 F.Supp. 1148 (E.D.Va. 1977), most of the Commission's claims of wrongdoing were found to be without substance, and while one claim was sustained, injunctive relief was denied on principles enunciated by this Court in *United States* v. *W. T. Grant Co.*, 345 U.S. 629 (1953); *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944).

statutory responsibilities to act in the public interest and to protect investors. Obviously, if this be the contention, the appropriate remedy is for it to go back to Congress to obtain suitable powers, not to give the existing statute a contrived construction subject to the sort of open-ended abuse to which the Commission has subjected it. As this Court said in *FMC* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 744-45 (1973):

> "If, as petitioner contends, there is now a compelling need to fill the gap in the Commission's regulatory authority, the need should be met in Congress where the competing policy questions can be thrashed out and a resolution found. We are not ready to meet that need by rewriting the statute and legislative history ourselves."

Finally, in eschewing section 12(j) as a suitable remedial vehicle, the Government's brief lapses into wholly inexplicable *non sequiturs*, and to complete misreadings of the statute itself. This is particularly evident in the Government's "Fourth" purported differentiation of sections 12(k) and 12(j) (Brief, pp. 32-33):

> "Fourth, Sections 12(j) and 12(k) differ significantly in the way that they protect investors. Suspension of trading under Section 12(k) is a temporary prophylactic measure the need for which must be determined *de novo* by the Commission every ten days. Trading is permitted to resume when the threat has passed. Moreover, when trading is suspended under Section 12(k), the issuer remains subject to, *inter alia*, the periodic reporting requirements and proxy provisions of the Act, and officers and directors of the issuer and beneficial owners of more than 10 percent of the issuer's stock must continue to file ownership reports with the Commission. See 15 U.S.C. 78m, 78n, and 78p.

These important protections are lost when the registration of a security is revoked pursuant to Section 12(j). As Professor Loss has observed (II Loss, *supra*, at 845):

> "The remedy [of deregistration] is Draconian. When management fails to comply with some provision of the act or the Commission's rules—perhaps because it would just as soon be done with the obligations of registration anyway—it makes little sense to visit the sin on the innocent security holders by depriving them of an exchange market, not to mention the statutory advantages of registration.[14]

"14. Under present law (Section 12(j)), security holders would also be deprived of the over-the-counter market. . . ."

There are several answers to this plaint. First, little need be said about the "temporary prophylactic" character of section 12(k) suspensions, at least the way the Commission has utilized them: the two series of suspensions of Javelin's securities of which respondent complains each exceeded the one-year limitation imposed by section 12(j) itself, involving suspensions totaling 420 and 370 days respectively.[15] Nor is there any merit in the Government's implied suggestion that there is something immutable about the duration of a suspension entered under section 12(j).[16]

Secondly, if the Government seeks to intimate that the investing public is adversely affected under section 12(j)

[15] Other securities have been suspended for periods aggregating more than a year (App. 184-211). In one case such suspensions continued for well over a decade (Continental Vending Machine Corp., App. 189).

[16] Section 12(j) does not require a suspension *for* one year, it only limits such suspensions as the Commission may order to a period *not exceeding* one year. Obviously, in entering the suspension the Commission can condition its termination upon the issuer's bringing itself into compliance with whichever provision of the law or regulations it was violating.

by being deprived of a trading market (*e.g.*, Brief, pp. 33-34, nt. 14), manifestly, long term back-to-back suspensions of trading under section 12(k) have precisely the identical effect of depriving investors of a trading market, except that suspensions under section 12(k) are not accompanied or justified by the procedural protections of a hearing on the record which Congress provided as a prerequisite for all long term suspensions, expulsions or revocations. The Government argues (page 33, nt. 14), that "Under present law (Section 12(j)), security holders would also be deprived of the over-the-counter market." This is misleading because the identical restriction against over-the-counter trading exists with respect to a suspension of trading under section 12(k) (although that portion of section 12(k) is not quoted in the Government's Brief (p. 20)),[27] so that resort to section 12(k) similarly deprives securities holders of an over-the-counter market in the suspended security.

Third, there is no statutory warrant for the Government's implicit assumption that a *suspension* under section 12(j) (as distinguished from a *revocation* of a registration) either terminates the issuer's obligation to file periodic

[27] The final sentence of § 12(k) is identical to that of § 12(j) in forbidding trading by brokers, dealers and exchanges, except insofar as the language of each provisions refers to the specific administrative action taken under the particular sections. Thus, § 12(k) provides:

> "No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, *any security in which trading is so suspended*."

In § 12(j) the italicized language is replaced by "any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence." Thus the Government's implied argument in footnote 14, that there are substantially different effects upon investors resulting from the use of §§ 12(j) and 12(k), respectively, is simply erroneous and misleading.

reports and to comply with the Commission's Proxy Rules, or ends its insiders' obligation to file beneficial ownership reports (and the related restrictions on short-swing profits) contained respectively in sections 13, 14 and 16 of the Act, 15 U.S.C. §§ 78m, 78n, 78p. The Government's argument seems designed to frighten more than to elucidate, stressing as it does only the power to *deregister* contained in section 12(j), while wholly ignoring the alternative power to *suspend* the registration.

In fact, very few companies now filing reports under section 13(a) will be relieved of their obligation to file periodic reports by reason of a suspension of registration, because their inchoate obligation to file the identical reports would immediately mature under another provision of the Act. Section 15(d) of the Act, 15 U.S.C. § 78*o*(d), explicitly imposes upon any issuer which *has filed* a registration statement under section 12 or under the Securities Act of 1933, or an issuer which has filed an undertaking, the obligation to file "such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this chapter in respect of a security registered pursuant to section 12 of this chapter," such duty under section 15(d) being suspended "if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this chapter."

Thus, upon the entry of an order suspending an issuer's registration under section 12(j), the issuer's obligation to file periodic reports would continue unchanged, although the obligation to file might shift from section 13(a) of the Act to section 15(d), which is a change irrelevant to the assumed investor protection resulting from the disclosure of the information which the Commission requires to be contained in such reports.[28]

[28] While the issue is not so clear with respect to the Proxy Rules under § 14(a) and the insider reports and prohibitions on short-

The Commission has ample remedial powers, and this Court should decline its invitation to reverse the Court below so as to give to section 12(k) a reading inconsistent both with its language and legislative history, and with the general framework of the Exchnge Act.

(c) There is no warrant for the Government's argument that in recodifying section 19(a)(4) into section 12(k) Congress gave its sanction to consecutive summary suspensions in all cases

The Government argues (Brief, pp. 27-29) that because the various committees of Congress knew that the Commission resorts to consecutive summary suspensions of trading, therefore Congress must be deemed to have approved the practice in all circumstances. There are three answers to this argument.

(i) Congress cannot be deemed to have consented to all summary suspensions merely because some such suspensions might be authorized by the Exchange Act

In the first place, as our preceding discussion demonstrates (*ante*, pp. 21-22), there are circumstances in which consecutive summary suspensions are consonant with the

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swing profits of §§ 16(a) and (b), respectively—since the two provisions apply only "in respect of any security (other than an exempted security) registered pursuant to section 12 of this chapter" (§ 14(a)), or of "any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this chapter" (§ 16(a))—we would be surprised if the Commission categorically avowed that a mere *suspension* of registration pursuant to § 12(j) resulted in rendering sections 14 and 16 inapplicable. It is quite one thing for commentators to speculate as to the results of *deregistration*, and for the Commission to accept such conclusions in the context of *deregistration*, and quite another thing altogether for the Commission unequivocally to state that similar consequences flow from a mere *suspension* of a registration statement. The Government's Brief has not said that the provisions of §§ 14(a) and 16(a) and (b) would cease to apply in a suspension situation, nor is it likely to say so in reply.

legislative scheme, so that the fact that Congress did not categorically prohibit them altogether is not probative on the issue involved here. Nor do we understand the Court of Appeals to have said that every such reinstitution is a violation of the statutory command.

Thus there would seem to be no statutory inhibition on the Commission's entering the suspension order dated April 2, 1976 suspending trading in Javelin's stock from April 3 through April 12, 1976 (App. 103) in light of the Staff's having advised the Commission in its memorandum of that date (App. 107-08) that

> "The company [Javelin] is now delinquent with respect to the filing of its Form 10-K due March 31, 1976. CJV's auditors have informed the board that they recently received information which may cause them to revoke their certification of CJV's balance sheet as of December 31, 1973."

Occurring just before the expiration of a prior suspension of trading, either event would warrant a further suspension, given the purpose of section 13(a) to prevent public trading in the absence of accurate current financial information.

Such a suspension would have given the Staff time to prepare a complaint for injunction on account of the late filing or to move for a contempt citation under the 1974 injunction of the Southern District of New York (Brief, p. 7, nt. 4) because of the allegedly false 1973 financial statements (which were filed after, and pursuant to, said injunction). As we understand the decision below, what the Court condemned was the rote reinstitution of summary suspension orders in a manner which did not utilize them as the emergency stop-gap measure which Congress provided to the Commission, but as an ultimate remedy of

choice to which the Commission turns because its use imposes no obligation on the Commission's Staff to prove its real or feigned suspicions, or to justify its conduct beyond regularly parroting the statutory language "the public interest and the protection of investors."

(ii) Congressional acquiescence cannot be inferred from the legislative history

A more serious question raised by the Government's argument is that it ignores the constitutionally authorized procedure for enacting statutes. It is axiomatic that statutes are enacted by the concurrence of a majority of each House of the Congress and the approval of the President. Particularly in circumstances in which the Congress has enacted a statute characterized by its sponsors as merely a recodification without substantial change of prior statutory language, it perverts a salutary principle of statutory construction to invoke such a reenactment or recodification in order to impute to each member of the majority of the two Houses an intimate and detailed knowledge of the contents of Committee Reports accompanying the legislation, which, if closely scrutinized, might have disclosed that a government agency had grossly exceeded its statutory powers. This is so even if approval of the practice might properly be imputed to a friendly Committee or Committee Chairman. As this Court said in *Zuber* v. *Allen*, 396 U.S. 168, 185-86, nn. 21, 24 (1969), "Congressional inaction frequently betokens unawareness, preoccupation or paralysis." [19]

[19] This Court has granted certiorari in two cases involving the so-called "one House veto", *Atkins* v. *United States*, Dkt. 77-214, and *Pressler* v. *Blumenthal*, Dkt. 77-450. It seems to us that the Government's position here raises considerably more serious constitutional problems since, instead of a "one House veto," we deal here with a "no-House enactment."

Moreover, various sections of the Exchange Act contain more than one substantive power or limitation. Some of these have been amended from time to time in one particular, while leaving other portions of the section unchanged. The Government's present argument would retroactively validate each unauthorized exercise of power by the Commission, solely by implication, if such exercise were based upon a section which had been amended in another particular or recodified, so long as some disclosure of the unlawful practice were made in passing in the Commission's reports to Congress, or in a congressional committee report.

One such instance of the Commission's (or its Staff's) abuse of power is now before the Second Circuit and may be expected to find its way to this Court before long. It involves section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), part of which authorizes the Commission to bring injunction actions in the district courts, authorizes those courts to grant an injunction upon a "proper showing," and precludes the assessment of costs against the Commission. That provision had previously been contained in section 21(e), *see* P.L. 94-29, § 17(2) (1975), and was reenacted in 1975 as section 21(d), with relatively minor changes in the language pertaining to the circumstances under which the Commission may seek injunctive relief.

However, section 21(d) and its predecessor also contain another provision which was unaffected by the amendments of 1975 (beyond being transposed from subdivision (e) to subdivision (d)). That provision is that:

> "The *Commission* may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the *Attorney General*, who may, in his discretion, institute the nec-

essary criminal proceedings under this chapter." (Emphasis added).

Manifestly, as drawn, the statute contemplates that a criminal reference be from the Commission, acting collegially (*i.e.*, five Commissioners appointed by the President with the consent of the Senate), to the Attorney General (also a presidential appointee with the consent of the Senate), with the Attorney General exercising the discretion as to whether to institute criminal proceedings.

In *United States* v. *Fields*, —— F.Supp. ——, CCH Sec. L.Rep. ¶ 96,074 at p. 91,848 (S.D.N.Y. 1977), Judge Haight considered, but declined to invalidate a "working relationship" by which members of the Commission's New York Regional Office make criminal references directly to Assistant United States Attorneys for the Southern District of New York, thus effectively repealing the statutorily imposed procedure of references from the Commission to the Attorney General. In *Fields* the initial reference (Finding # 32, p. 91,842) was actually made to Assistant U.S. Attorney Ira Lee Sorkin, himself an alumnus of the New York Regional Office,[30] betraying an element of incestuousness which the statute manifestly does not contemplate. The acknowledged purpose of the SEC Enforcement Staff members in *Fields* was that "we really want to get TDA" (the issuer), (Finding #32, p. 91,842), a human motive quite understandable in individual members of an organization, and likely to receive a sympathetic reception by an emeritus member of the Commission's Enforcement Staff. In contrast, such motives are unlikely to be acknowledged when the Commissioners act collegially, or to play much of a role in the exercise of the statutory discretion reposed in the Attorney General.

[30] *SEC* v. *Harwyn Industries Corp.*, 326 F.Supp. 943, 945 (S.D. N.Y. 1971).

Putting aside the correctness of Judge Haight's refusal to invalidate the "working relationship", an issue not before this Court at this time, the Government's present argument of congressional acquiescence would apply by hypothesis to ratify the "working relationship" between the New York Regional Office and the U.S. Attorney for the Southern District of New York, because of an unrelated amendment or a recodification of former section 21 (e) in 1975, notwithstanding that in approving the recodification and amendment of former section 21(e) in unrelated particulars, the Congress cannot reasonably be assumed to have approved an unauthorized practice merely because it did not categorically forbid it. That, however, is what the Government appears to be arguing in the present case.

This Court has itself answered the Government's argument (and also the related argument that the Commission's expertise requires great deference to be given to its reading of a statute which it helped to draft). In *Federal Maritime Commission* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 745-46 (1973), Mr. Justice Marshall said for the Court:

> "But the Commission contends that since it is charged with administration of the statutory scheme, its construction of the statute over an extended period should be given great weight. . . . This proposition may, as a general matter, be conceded, although it must be tempered with the caveat that an agency may not bootstrap itself into an area in which it has no jurisdiction by repeatedly violating its statutory mandate. In this case, however, there is a disjunction between the abstract principle and the empirical data. The court below made a detailed study of the prior Commission cases relied upon by petitioner to bolster its interpretation of the statute and concluded that

none of them involved assertion of jurisdiction over a case such as this, where the agreement in question imposed no on-going obligations. We find it unnecessary to decide whether every prior case decided by the Commission can be reconciled with our opinion today. It is sufficient to note that the cases do not demonstrate the sort of long standing, clearly articulated interpretation of the statute which would be entitled to great judicial deference, particularly in light of the clear indications that Congress did not intend to vest the Commission with the authority it is now seeking to assert. As this Court held in a related context,

> "'The construction put on a statute by the agency charged with administering it is entitled to deference by the courts, and ordinarily that construction will be affirmed if it has a "reasonable basis in law." • • • But the courts are the final authorities on issues of statutory construction, *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 385, and "are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." *NLRB* v. *Brown*, 380 U.S. 278, 291.' *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission*, 390 U.S. 261, 272 (1968).
>
> "In this case, we find that the Commission overstepped the limits which Congress placed on its jurisdictions."

Finally, we believe that the fact that S.Rep. 94-75, 94th Cong., 1st Sess., at 106 (1975), U.S.Code Cong. & Admin. News 1975, pp. 283-84, stated that "the Commission is expected to use this section [12(j)] rather than its ten-day suspension power in cases of extended duration" is far

more significant than the fact that some members of the relevant congressional committees may have known of some aspects of the Commission's practice. *Semble, accord, Sloan* v. *SEC*, 547 F.2d 152, 157 (2d Cir. 1976).

(iii) It is likely that Congress was not informed of the extent to which the Commission resorted and would resort to summary suspensions of long duration

If the Commission's disclosures here and in the Court below are indicative, it is doubtful that the Commission had given Congress enough of the details respecting its practice of entering consecutive summary suspensions to permit any kind of inference as to congressional approval.

In the present case, as in *FMC* v. *Seatrain Lines, Inc.*, *supra*, "there is a disjunction between the abstract principle [asserted by the Government] and the empirical data" upon which the assertion is made. Congressional approval of the practice of consecutive summary suspensions is claimed to have resulted from the fact that in 1964, when the statute was amended to extend the summary power to over-the-counter securities, the House and Senate Committees were advised that the Commission interpreted the provision to authorize reinstitution of suspensions, and the Senate Committee is quoted as stating "The committee accepts this interpretation." (Brief, pp. 27-29). But an examination of the Commission's actual practice over the years negates any thought that Congress in 1964 had any idea of the manner in which the Commission had utilized the power in the past, intended to utilize it, or has utilized it since Congress amended the statute.

Beyond being told that the congressional committees did know that the Commission does impose consecutive summary trading suspensions, we are not informed as to

how much of the Commission's practice was actually disclosed to those committees. However, it is a fair inference that the Commission's description of its practice in the present brief parallels the sort of disclosures which it actually made to Congress. We examine these disclosures in the light of the information supplied by the Commission concerning trading suspensions between February 11, 1959 and January 3, 1975 (App. 183-211),[31] and draw some inferences therefrom.

Speaking of the Commission's pre-1964 use of consecutive summary trading suspensions, the Government says (Brief, pp. 23-24):

> "The Commission's first use of its summary suspension power under the predecessor of Section 12(k) involved successive orders that resulted in the suspension of trading for almost one month. *Elastic Stop Nut Corp. of America,* Securities Exchange Act Release No. 3626 (November 29, 1944). Before 1964, when the Commission's summary suspension power was extended to securities traded in the over-the-counter market, [i.e., in the ensuing twenty years] the Commission had exercised that power with respect to 30 securities, and in only one case was trading permitted to resume upon the expiration of the first ten-day suspension."

In short, the information presumably given to the congressional committees in 1964 was that in the prior twenty years the Commission had instituted successive summary

[31] The Commission lists the suspensions alphabetically, which makes App. 183-211 virtually useless. We have rearranged the suspensions chronologically and annexed them as an Appendix to this Brief, thus allowing some meaningful analysis of the historical use of summary suspensions as well as a cross-reference to the Commission's own documents.

suspensions at the average rate of only one and a half suspensions a year, lasting up to a month. The information provided in the Appendix relates only to the years 1959 through 1963 (six of the twenty years).[32] One of those years (1963) involved two suspensions (including one which ultimately lasted more than thirteen years); two of the years (1959 and 1961) involved only one suspension each, and there were none in 1960. However there were seven in 1962, including four lasting six months or more, a total for the five years as to which information is given of twelve suspensions. We wonder whether Congress might not have been troubled, had it known, with the manner in which suspensions were imposed in 1962, or curious as to the reason why there were so many suspensions that year which involved such long durations. It is likely that the durations themselves were never disclosed to Congress, else its committees might not have been so sanguine about the Commission's reasonableness in exercising this summary suspension power.

Still phrasing the issue in terms of averages, the Commission also informs the Court (Brief, p. 18; Reply Memo. on Petition for Cert., pp. 2-3), that following the amendment of 1964 it has also been circumspect in exercising its summary suspension of trading power:

> "First, 'the Commission's power to issue consecutive 10-day suspension orders has been exercised with respect to an average of 20 securities each year for the past 12 years' (Pet. Reply Mem. 2-3), and it is not unreasonable to project that trend into the future (assuming *arguendo* that the Commission retains the power to issue such orders). Second, the Commission's

[32] The 1974 suspension of Fotochrome, Inc. (App. 192) was entered after the effective date of the 1964 amendment, see P.L. 88-467, § 6, 78 Stat. 570-574, August 20, 1964.

staff has estimated that between 25,000 and 30,000 corporations have publicly traded stock."

At page 24 it adds:

"Between the enactment of the 1964 amendment and the decision of the court of appeals in November 1976, the Commission had exercised its authority summary to suspend trading with respect to 941 securities; in 235 of these cases successive orders were issued resulting in the suspension of trading for more than ten consecutive days."

This language implies that the increase in the raw number of summary suspensions, and in the number of successive summary suspensions, was a function of extending the power to enter summary suspensions of trading to over-the-counter securities by the enactment of former section 15(c)(5) in 1964, and did not represent much of a change of policy since the number of securities now subject to suspension was drastically increased.

Yet an examination of the information furnished in the Appendix discloses some disturbing elements in the Commission's practice and suggests that the power is being used both arbitrarily and irrationally. Thus, the following facts emerge, which we set forth in tabular form:

Year	No. Suspensions	No. Consec. Suspen.	Suspen. 6 Mos. or More
1964	1	1	0
1965	9	8	2
1966	10	9	4
1967	28	22	6
1968	37	29	6
1969	52	18	4

Year	No. Suspensions	No. Consec. Suspen.	Suspen. 6 Mos. or More
1970	22	4	0
1971	34	7	3
1972	50	28	6
1973	236	43	11
1974	168	17	2

Although we are not provided with detailed information for 1975 and 1976, which are included in the twelve year period referred to in the Government's Brief, the first fact which emerges is that in three of these years (1968, 1972 and 1973) the number of consecutive suspensions in each of those years roughly equalled or exceeded the *total* number of consecutive suspensions imposed in the entire twenty year period preceding the 1964 amendment. Moreover, in each year other than 1964 and 1970, the number of consecutive summary suspensions exceeded the number imposed in 1962, the biggest year prior to the 1964 amendment.

Secondly, in each of the eleven years for which information is provided, other than 1964 and 1970, there was a minimum of two suspensions having a duration of six months (18 consecutive suspensions) or more. During these same years (exclusive of 1974),[33] consecutive suspensions which exceeded one year's duration (the limitation imposed by section 12(j) upon suspensions) were imposed on at least eleven securities (1965, 1966, 1968, 2 in 1971, 2 in

[33] No termination date is given for two of the consecutive suspensions imposed in 1974: Nicoa Corp., suspended June 18, 1974 (App. 200), and Bio-Medical Sciences, suspended October 11, 1974 (App. 187), so that presumably these suspensions were in effect as late as January 22, 1975, the last date given in the Commission's document.

1972,[34] 4 in 1973).[35] Only two pre-1964 suspensions lasted longer than one year: one of them, however, lasted for thirteen and a half years.[36]

Third, bearing in mind that a summary suspension is authorized upon the Commission's finding that "the public interest and protection of investors" warrants it, commencing at least in 1973, there are some fairly curious seasonal aspects to "the public interest" as disclosed by our chronological rearrangement of the Commission's record of summary suspensions. Thus large numbers of suspensions occurred on certain specific dates:

Date	*No. of Securities Suspended*
April 26, 1973	9
May 7, 1973	11
June 12-13, 1973	10
June 22, 1973	8
July 5-6, 1973	9
August 1-3, 1973	10
August 8, 1973	7
December 4, 1973	9
January 3, 1974	7

[34] The suspensions of two additional securities, First World Corp., suspended May 10, 1972 (App. 192), and Clinton Oil Corp., suspended May 31, 1972 (App. 188) were one week short of a year's duration.

[35] Apart from Javelin, suspended on November 29, 1973, three other suspensions are given for which no termination date is provided (Equity Funding Corp., suspended March 28, 1973 (App. 191), BBI, Inc., suspended May 24, 1973 (App. 187), and Royal Properties, suspended June 22, 1973 (App. 204)), each of which apparently continued into May or June 1976 (*see ante*, p. 14, nt. 12).

[36] The suspension of trading in the securities of Continental Vending was lifted on June 2, 1976, Exchange Act Release 12505, 9 SEC Docket 787 (June 2, 1976), while the petition for certiorari from the dismissal of respondent's first petition for review was still pending in this Court and the second petition for review was pending before the Second Circuit.

Date	*No. of Securities Suspended*
February 26-28, 1974	13
April 11, 1974	48
May 6-8, 1974	14

What is remarkable about this tabulation—and we are focusing here solely upon the entry of a summary suspension, without regard to whether the summary suspensions was summarily renewed—is the total lack of relation to any event which might justify, for example, the entry of forty-eight suspensions on the single day April 11, 1974. Forty-eight suspensions is more than half again the *total* number of summary suspensions entered during the twenty-year period preceding the 1964 amendment.

The explanation given for the forty-eight suspensions on April 11, 1974 is that they were imposed on account of delinquent Annual Reports on Form 10-K,[37] since summary suspensions are now routinely entered when an issuer becomes delinquent in filing a periodic report. Since 1973, issuers have been required to file their Form 10-K Annual reports ninety days after the close of their fiscal years. A company which reports on a calendar year basis (and we are confident that the Government will not deny that most issuers are in that category) is thus required to file its Form 10-K on or before March 30 (or March 29 in leap years). This in turn means that the Commission waited twelve days (or a longer period than the allowed duration for a summary suspension) before instituting such suspensions *en masse*, rather than instituting suspensions *seriatim* upon ascertaining that the 10-K Report had not been filed with respect to each company. This in turn suggests that "the public interest and the protection

[37] Exchange Act Release 10732, 4 SEC Docket 82 (April 11, 1976).

of investors" is not so high a priority as the Government's Brief here suggests.[38]

Similarly there is no obvious explanation for the large number of suspensions on May 7, 1973 and May 6 through 8, 1974, a total in the two years of twenty-five suspensions. In each case the date of suspension is some five weeks after the 10-K Annual Reports would be due for a calendar year issuer, and occurs at least a week before the First Quarter Forms 10-Q are due. Nor does any other date of numerous summary suspensions set forth in the preceding table tie conveniently into a filing date.

The one fact which emerges from the Commission's own record of summary suspensions is that the Division of Enforcement is becoming more and more enamored of resort to summary procedures not requiring any hearing or other due process protections, a tendency which should be limited, not encouraged. The Court below properly enjoined the practice.

[38] One other possible explanation for the April 11, 1974 date which seems totally unrelated to the public interest and the protection of investors is the fact that on February 13, 1974 the former Director of Enforcement became a member of the Commission and his successor was appointed. Misc.Rel. U 449, U 450. Manifestly a change of enforcement directors should play little if any part in *the Commission's* evaluation of the public interest and what is required for the protection of investors, if, as claimed, it is *the Commission* which makes these decisions.

POINT III

The Statutory Phrase "In The Public Interest And For The Protection Of Investors" Does Not Authorize The Commission's Practice, And Its Repeated Incantation Of The Phrase Does Not Satisfy The Requirement Of An Independent Evaluation By The Commission Itself.

The Government's argument is that successive summary suspensions of trading are authorized if the Commission independently makes the determination at the onset of each suspension that "the public interest and protection of investors" warrant the further suspension. Apparently, the Commission assumes that including the statutory language in the form orders suspending trading (the form itself only requiring the insertion of dates and name of issuer) satisfies the congressional limitation, although the Staff memoranda (App. 14-108) betray little more than the fact that it was not prepared to take action against the alleged wrongdoing.

Moreover, in urging this construction the Government limits its analysis of the congressional intention to the present section 12(k), 15 U.S.C. § 78*l*(k), and its two predecessor sections, 19(a)(4) and 15(c)(5), 15 U.S.C. §§ 78s (a)(4), 78*o*(c)(5), wholly ignoring the text of surrounding provisions, including other subdivisions of the two predecessor sections. If there is any lesson whatever to be learned from this Court's decision in *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 199-201 ff. (1976), it is that in searching for congressional intent with respect to one section of the Exchange Act, it is not merely appropriate but may be absolutely necessary to consult other related statutory provisions.

Accordingly, in this Point we review the congressional use of the *two* statutory tests of "the public interest" and

"the protection of investors" contained in present section 12(k), in the context of other provisions closely related to former sections 19(a)(4) and 15(c)(5), and then consider whether Congress either has delegated too much power to the Commission in the current section 12(k), or the Commission is simply misreading its governing statute and inferring too much from the statutory language.

(a) Congress could not have intended the rote "finding" of "the public interest" to be a substitute for the notice and hearing otherwise required for long-term suspensions "for the protection of investors"

While the Government's Brief inundates the Court with not less than twenty-one incantations[39] of the phrase "the public interest and protection of investors" or some variant thereof, manifestly the phrase itself contains *two* factors, not one, and although both are found in section 12(k), they have elsewhere been used separately. An examination of the statute reveals that there could not have been a congressional intention, by combining the two factors, to dispense with every due process protection so meticulously preserved elsewhere in the Act.

Prior to the amendment of 1974, section 19(a) of Exchange Act, 48 Stat. 898 (June 6, 1934), 15 U.S.C. § 78s(a), commenced with the language (applicable to all of its subsections) "The Commission is authorized, if in its opinion such action is necessary or appropriate *for the protection of investors*—." Each of the first three subdivisions then authorized the Commission, in each case "After appropriate notice and opportunity for hearing," to enter orders (1) suspending for not more than twelve months or withdrawing the registration of a securities exchange; (2) sus-

[39] Brief, pp. 3, 4, 10, 11, 12, 13, 14, 20, 21 (3), 22, 23 (3), 25, 30, 32 (2), 37, 38.

pending for not more than twelve months or withdrawing the registration of the security of an issuer upon a finding of the issuer's violation of the Act or regulations thereunder; and (3) suspending for a period not exceeding twelve months, or expelling from membership in any securities exchange, any member or officer who the Commission finds has violated the Act or the regulations thereunder. Thus, each of the first three subdivisions of former section 19(a) required a hearing before action could be taken "for the protection of investors."

Subdivision (4) of former section 19(a)—one of the two predecessor provisions of the present section 12(k)—did not follow this pattern. The subdivision did not begin with the "after appropriate notice" language, nor did it confine the power to be exercised either to a suspension not to exceed twelve months or to a termination, revocation or expulsion, upon the finding of wrongdoing by the person or entity sanctioned. Instead, to the opening "protection of investors" language of section 19(a) applicable to all four subdivisions, subdivision (4) adds the following language:

> "And if in its opinion *the public interest so requires*, summarily to suspend trading in any security on any national securities exchange for a period not exceeding ten days, . . ."

Facially, as used in former section 19(a)(4), the term "the public interest" was equated with an emergency situation which, for a sharply limited duration, permitted remedial action in complete disregard for the due process protections routinely furnished to potential targets of Commission action.

The other predecessor provision of section 12(k), former section 15(c)(5) of the Act, 15 U.S.C. § 78*o*(c)(5), follows

this general format. Section 15 as a whole deals primarily with brokers and dealers. Subsections 15(c)(1) through (3) impose three prohibitions against broker-dealer conduct, in each case authorizing the Commission "by rules and regulations [to] define" the acts, practices, devices, and so forth, forbidden by the section, or to establish safeguards with respect to the broker's or dealer's financial responsibility. While these provisions themselves contain no sanctions, merely authorizing the adoption of rules of prospective application, they must be read together with section 15(b)(5)(D) and (E), 15 U.S.C. § 78*o*(b)(5)(D) and (E), which direct the SEC

> "after appropriate notice and opportunity for hearing, by order [to] censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension, or revocation is in the public interest and that such broker or dealer . . . (D) has willfully violated any provision of . . . this chapter, or of any rule or regulation [thereunder; or] (E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person . . . of this chapter, or of any rule or regulation [thereunder] . . ."

Here, in contrast to former section 19(a)(4), the sanctions are to be imposed "in the public interest", but only after notice and an opportunity for hearing.

Subdivision (5) of former section 15(c), provided that:

> "If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading, otherwise than on a national securities exchange, in any security . . . for a period not exceeding ten days."

The Government argues that under former sections 19(a)(4) and 15(c)(5) the Commission had the authority, requiring only a fresh "finding" that "the public interest and protection of investors" so require, to institute a second summary ten-day suspension of trading, to be followed, upon a similar "finding," by a third, or fourth or however many such suspensions are "found" to be necessary. Yet, another related provision negates this argument. Former section 15(b)(6), dealing with the registration of broker-dealers, is contrary to the Government's present claims from the standpoint of the manner in which it utilized the "public interest" and "protection of investors" language:

> "(6) Pending final determination whether any registration under this subsection shall be denied, the Commission may by order postpone the effective date of such registration for a period not to exceed fifteen days, but if, after appropriate notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, the Commission shall so order. Pending final determination whether any such registration shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors. . . ."

Thus section 15(b)(6) allowed a single summary fifteen day postponement of registration, which could be followed by a longer postponement "after appropriate notice and opportunity for hearing", and a suspension of an existing

registration could be only after such notice and hearing.[49] The existence of this provision alone cuts sharply against the Government's reading of the related former sections 19(a)(4) and 15(c)(5) as allowing an indefinite number of consecutive summary suspensions of trading.

The two current suspension of trading provisions are found in section 12(j) and in section 12(k) of the Exchange Act, as amended in 1974, 15 U.S.C. § 78*l*(j), 78*l*(k), and carry forward the pre-existing dichotomy. Section 12(j) provides in pertinent part:

> "(j) The Commission is authorized by order, as it deems necessary or appropriate for the protection of investors, to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder."

Section 22(k) provides in pertinent part:

> "(k) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security . . . for a period not exceeding ten days, . . ."

Thus, under section 12(j), in order to suspend a registration statement for a period not exceeding twelve months, or to revoke the registration of a security, it is necessary for the Commission to find, albeit on the record and after notice and an opportunity for a hearing, only that "the protection of investors" so requires. In contrast, under section 12(k), the Commission is authorized, without notice or opportunity for hearing, to suspend trading in a security for a period of not more than ten days, but solely upon the finding that both "the public interest *and* [the] protection of investors so require," (*N.B.* the use of the plural verb).

Since section 12(j), like former sections 19(a)(1) through (3), 15(c)(1) through (3) and 15(b)(4) and (6), requires a finding on the record and after notice and hearing that the "protection of investors" so requires in order to revoke, suspend or postpone registration, etc., for up to a year or permanently, as the case may be, to accept the Government's argument that the Commission is authorized by section 12(k) and its predecessor provisions to enter successive summary suspensions—which may and frequently do exceed one year's duration—without notice or a hearing, and solely upon an *in camera* determination (if any is really ever made) that the "public interest and protection of investors" so requires, would mean that "the public interest" finding (required under section 12(k) but not in terms required under section 12(j)) alone authorizes back-to-back suspensions of trading without notice or hearing, for indefinite periods.

Apart from the fact that this reading of the two statutes puts an undue stress upon the phrase "the public interest," and utilizes it in a manner which makes a rote "finding" of such "public interest" functionally superior to the finding of the need for investor protection made after notice and hearing, the construction effectively repeals any necessity for section 12(j), and the Government concedes that the power it gives the Commission is rarely if ever used

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[49] The 1975 amendment of section 15(b)(6) eliminated the fifteen day summary postponement, but restricted the Commission in both of its powers—to suspend a registration, or to revoke it—in each case only after notice and hearing. P.L. 94-29, § 11(2), 89 Stat. 121 (June 4, 1975).

(Brief, pp. 33-43, nt. 14) The Government's reading of the statute thus is inconsistent with the other provisions of the Act surrounding it, and should be rejected.

(b) Since the statute itself provides no guidelines, the statutory phrases "public interest" and "protection of investors" are unconstitutionally too broad a grant of authority for punitive or "remedial" action

These two phrases, "the public interest" and "the protection of investors" are too general and evanescent a grant of legislative power when used to authorize the Commission to act informally to discipline or to "remedy" situations which may be beyond the control of an issuer, and to do so upon a record consisting of nothing more than the incantation of the statutory language. As it has been used, it is the power to do anything at all.

In the Court below (Answering Brief, pp. 30-32), the Commission argued that the standards are not too broad:

> "The standards prescribed by Section 12(k) are adequate to guide the Commission in the exercise of its administrative discretion. [*Lichter* v. *United States*, 334 U.S. 742, 785 (1948)]. That provision requires that the action of the Commission be taken only in situations where such action is necessary or appropriate for the protection of investors *and* if the public interest so requires. Each of these two standards, 'public interest' and 'protection of investors,' has been held adequate by the courts to satisfy the constitutional requirements. In *Wright* v. *Securities and Exchange Commission*, 112 F.2d 89, 94-95 (C.A. 2, 1940), this Court held that the 'protection of investors,' standard in Section 19 of the Securities Exchange Act was a sufficiently definite criterion to guide the Commission in the exercise of its administrative authority.

Similarly, in *American Sumatra Tobacco Corp.* v. *Securities and Exchange Commission*, 110 F.2d 117, 121 (C.A. D.C., 1940), it was held that the 'public interest' standard in Section 24(b) of the Securities Exchange Act was 'a sufficient guide,' in the light of the 'main purpose of the Act * * * to insure the maintenance of fair and honest markets in transactions in securities on national exchanges,' and, accordingly, that no unconstitutional delegation of authority was involved.

"The Supreme Court has repeatedly held that summary administrative action affecting property interests will be sustained in extraordinary situations where some valid governmental interest is at stake. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974) (summary seizure of pleasure yacht); *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564 (1972) (nonretention of state university teacher); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972) (statute permiting summary replevin by private person); *Fahey* v. *Mallonee*, 332 U.S. 245 (1947) (appointment of savings and loan association conservator); *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950) (multiple seizures of misbranded drugs); *Bowles* v. *Willingham*, 321 U.S. 503 (1944) (Emergency Price Control Act provision authorizing rent ceilings); *Phillips* v. *Commissioner*, 283 U.S. 589 (1931) (tax deficiency judgments without prior hearing on liability). Cf. *Bell* v. *Burson*, 402 U.S. 535 (1971) (summary suspension of vehicle registration and driver's license); *Bi-Metallic Investment Co.* v. *State Board*, 239 U.S. 441 (1915) (State ordered increase in property valuations). This Court has also had occasion to apply this doctrine sustaining summary administrative action in the public interest. *Pordum* v. *Board of Regents of State of New York*, 491 F.2d 1281, 1284-1285 (C.A. 2, 1974)

(Commissioner of Education; summary suspension of teacher upheld)." (Footnotes omitted).

In fact the decisions cited by the Commission below do not support its conclusions. Apart from emergencies, they sustain one or more of the following principles:

(a) A congressional grant of authority to an administrative agency—*to enact regulations* filling in the interstices of the prescribed statutory format or defining acts to be unlawful in accordance with such format, "in the public interest or for the protection of" a described class of person—is not an unconstitutional delegation of legislative power. Cf., *Ernst & Ernst* v. *Hochfelder, supra,* 425 U.S. 185, 199-201 (1976). In *Hochfelder* the Court held, *id.*, at 212-13:

> "The rulemaking power granted to an administrative agency charged with the administration of a federal statute is not the power to make law. Rather, it is '"the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. . . ."' Thus, despite the broad view of the Rule advanced by the Commission in this case, its scope cannot exceed the power granted the Commission by § 10(b)."

(b) A congressional grant of authority to an administrative agency to take remedial or quasi-judicial action "in the public interest or for the protection of" a described class of person—*in accordance with explicit statutory prohibitions* or directions or *in accordance with regulations so adopted*—is not an unconstitutional grant of power. *E.g. Phillips* v. *Commissioner, supra,* 283 U.S. 589, 596-97 (1931); *Fahey* v. *Mallonee,* 332 U.S. 245, 250-53 (1947).

(c) A congressional grant of authority to an administrative agency *to make technical economic or similar judg-*

ments based upon an administrative expertise, "in the public interest or for the protection of" a described class of person—in accordance with the legislatively mandated statutory purpose—is not an unconstitutional grant of power. *E.g., Bowles* v. *Willingham, supra,* 321 U.S. 503, 514-16 (1944); *Lichter* v. *United States, supra,* 334 U.S. 742 (1948); *New York Central Securities Corp.* v. *United States,* 287 U.S. 12, 22-23 (1932).

However none of the cases cited by the Commission below supports a grant of power to an administrative agency to take remedial or quasi-judicial action, ostensibly "in the public interest or for the protection of" a described class of person, where no statutory guidelines are provided and there are no regulations defining under what circumstances the agency will act or refuse to act. Manifestly such grant of authority, or at least the Commission's supererogation of such authority if not granted, results in an unconstitutional delegation of power, which the Commission (or its Staff) can and has used both irrationally and arbitrarily, if not vindictively. The cases do not support such a grant.

The two Court of Appeals decisions cited by the Commission below certainly do not support any such power. *Wright* v. *SEC, supra,* 112 F.2d 89 (2d Cir. 1940), is presumably cited because it in terms sustained a grant of power to be exercised for "the protection of investors"—the power to expel a member of a securities exchange under section 19(a)(3). However, apart from the fact that the expulsion had been ordered after the full hearing mandated by section 19(a)(3), upon evidence which the Court of Appeals found sufficient as to one substantive charge of manipulation (but not as to another, for which reason the Court remanded for a reconsideration of the administrative sanction), the cited decision was narrowly drawn.

On the issue of the allegedly unconstitutional grant of authority to the Commission, the Second Circuit said, 112 F.2d at 94-95:

> "It is urged that section 19(a)(3) is an unlawful delegation of legislative power to an administrative agency because the statute declares no standards to guide the Commission in determining whether suspension or expulsion is necessary or appropriate for the protection of investors. We cannot accept that argument. Congress has defined the conduct that is unlawful and has left to the administrative agency, subject to judicial review, discretion to determine whether protection of investors requires that one who has been found guilty of unlawful conduct on a national securities exchange should be temporarily or permanently excluded from carrying on activities as a member of such an exchange. The 'protection of investors' is a sufficiently definite criterion to guide the Commission. See New York Central Securities Corp. v. United States, 287 U.S. 12, 24, 53 S.Ct. 45, 77 L.Ed. 138. Numerous cases are persuasive that the delegation to an administrative agency of discretion as to revocation of a license is not unconstitutional. . . . We think the principle of these cases is equally applicable, even though the Commission is unauthorized to admit to membership in a national securities exchange."

Similarly, *American Sumatra Tobacco Corp.* v. *SEC*, 110 F.2d 117 (App.D.C. 1940), is presumably cited because it sustained a grant of authority to the Commission to act for "the protection of investors". The precise issue in *American Sumatra* was whether the Commission could properly require the public disclosure of plaintiff's gross sales and cost of goods sold, where confidential treatment had been requested—despite the Commission's general rules requiring such disclosure—because of the alleged risk of adverse economic effects at the hands of plaintiff's customers. The requested waiver of its rules was refused by the Commission after extensive hearings.

Affirming the Commission's decision requiring disclosure because there was little risk of customer boycott, the Court said, 110 F.2d at 120, that "if the conclusion reached [by the Commission] is as likely to be correct as incorrect, it is our duty to let it stand." The Court then explained its *ratio decidendi*, *id.*, at 120-21:

> "But the question is primarily not for us but for the Commission, and Congress has unquestionably intended that the Commission should bring to bear upon the decision of this and like questions, what has been called in cases within the jurisdiction of the Interstate Commerce Commission, the knowledge and experience of experts. This does not by any means set up an inquisition destructive of the rights of the individual. The delegated power is not to be exercised arbitrarily or to be considered an unfettered discretion over the property of the citizen. Its exercise is subject to review. But so long as the Commission's decision rests on substantial evidence and on inferences which are not arbitrary and capricious, it should be sustained. In the discharge by Congress of a dominant trust for the benefit of the public, the possibility of incidental loss to the individual is sometimes unavoidable.
>
> "In this case the Commission has not justified its position on the ground of a general rule or a general policy. If it had, the case would have been different and would have demanded different treatment. The decision is placed on a fairer and broader ground.

And, considered in that aspect and with due regard to all of petitioner's relevant evidence, which given its fullest significance still leaves the question in the realm of doubt and speculation, we do not feel justified in declaring the action of the Commission subject to correction.

"This leaves for consideration petitioner's second point, that Section 24(b) of the Act delegates power without setting any standard for the Commission's action. Petitioner says the words 'public interest' are too general to be a proper safeguard, but we think this point is without merit. The main purpose of the Act is to insure the maintenance of fair and honest markets in transactions in securities on national exchanges. The Act requires the issuer of securities—the registrant—to make disclosures in order to forestall unfair practices in the sale of securities and for the protection of investors. The 'public interest' in this respect is just as definite as the 'public interest' in transportation facilities. Powers of the Interstate Commerce Commission to make decisions, confined only by the latter standard, have been continually upheld. . . . Considered in the light of the opinions in these cases, we think the Act provides a sufficient guide for administrative action whenever the Commission is called upon to decide whether or not disclosure is in the public interest."

As to the power to enter summary suspension(s) of trading, the Exchange Act provides no corresponding statutory guidelines or indicia as to what particular circumstances may warrant the imposition either of initial or consecutive summary suspensions, and the Commission has adopted no published guidelines or regulations which will alert issuers and the investing public as to what factors

will guide its putative discretion in deciding whether or not to impose such suspensions. As the Government has been at pains to note (Brief, pp. 30-31), the summary power under present section 12(k) does not require any showing of *issuer misconduct*, in contrast to the longer suspension power under section 12(j), yet it is issuers and their shareholders who are potentially adversely affected by consecutive suspensions lasting a longer period. *Cf.*, Brief, p. 13 ¶ D.

Moreover, since the Commission's Brief also makes clear that in cases of third-person misconduct which may affect the fairness of the market price for an issuer's security, a public release by the Commission may be sufficient protection of the investing public (*e.g.*, *id.*, pp. 5, 15),[41] the question is why, instead of entering endless successive suspensions not statutorily authorized, the Commission does not simply make suitable disclosures to alert the investing public as to the potential dangers, and permit trading to resume at the end of an initial suspension of trading.

The summary suspension power given to the Commission by the Congress was manifestly intended as an emergency stop-gap. This Court's decisions sustaining congressional grants of authority to administrative agencies to act within

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[41] At pages 4-5, the Government explains the lifting of the second series of suspensions of trading in Javelin's securities by saying that it filed a "wash trading" complaint against certain individuals believed to be manipulating Javelin's stock, adding, *id.*, p. 5, that "Once the public had an opportunity to become familiar with these allegations, the Commission permitted trading in CJL stock to resume." In footnote 2 it adds that "The Commission's action is still pending in the district court," thus demonstrating that in its view the protection of investors is accomplished if the Commission merely makes public the fact of yet-to-be proved allegations of wrongdoing. In December 1977, twenty months after the action was brought, the defendants therein named consented to an injunction without admitting or denying the allegations of the complaint. *But see, ante*, p. 24, nt. 20.

a statutory framework, *e.g., Lichter* v. *United States,* 334 U.S. 742, 784-85 (1948), simply cannot be stretched to cover the Commission's present claims on behalf of section 12(k), particularly given the capricious manner in which it has utilized the supposed authority. As this Court said in *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), "A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case." And, as the Court of Appeals said in *American Sumatra Tobacco Corp.* v. *SEC, supra,* 110 F.2d 117, 120-21 (App.D.C. 1940):

> "The delegated power is not to be exercised arbitrarily or to be considered an unfettered discretion over the property of the citizen. Its exercise is subject to review. But so long as the Commission's decision rests on substantial evidence and on inferences which are not arbitrary and capricious, it should be sustained."

The fact that "public interest" is not too vague a reference to justify the Commission's requiring disclosure of cost of goods sold, *American Sumatra, supra, loc.cit.,* and "protection of investors" was sustained as not overly broad in allowing it to expel a broker from exchange membership, *Wright* v. *SEC, supra,* in each case after notice and hearing, cannot control here. No standards are provided.

(c) The Commission's application of its summary suspension power and the related power to extend filing deadlines is arbitrary and irrational

As our analysis of the Commission's summary suspensions demonstrates (*ante*, pp. 41-46), the Commission now regularly enters summary suspensions upon an issuer's failure to file a timely periodic report under section 13(a) of the Act, 15 U.S.C. § 78m(a), which requires issuers to file reports "in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security." It is not without relevance to the issues in this proceeding to see how the Commission has utilized these provisions and construed the statutory language in connection with Javelin itself.

Either under section 13(a) or under the authority of section 12(b)(1), 15 U.S.C. § 78*l*(b)(1),[42] the Commission adopted Rule 12b-25, 17 CFR § 240.12b-25, allowing issuers to apply for extensions of time in filing. In pertinent part subdivision (a) and the prefatory note provide as follows:

> "*Rule 12b-25. Extension of Time for Furnishing Information.*
>
> "NOTE: The disclosures required in reports filed with the Commission are essential to the preservation of free, fair and informed securities markets. It is of critical importance that such reports be furnished within the time they are required to be filed under the Commission's rules. Only the most compelling and unexpected circumstances justify a delay in the filing of a report and the dissemination to the public of the factual information called for therein.
>
> "(a) If any required information, document or report . . . cannot, without unreasonable effort or expense be furnished within the time it is required to be filed, the registrant shall, as soon as possible, but no later than the last day of the specified period, file with the Commission, an application on Form 12b-25 for an

[42] Section 12(b)(1) permits registration of a security on a national securities exchange by the issuer's filing an application containing "Such information . . . as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors . . ." Section 13(a)(1) requires such documents to be kept current in accordance with the quoted language of section 13.

> extension of time of not more than 30 days furnishing the information called for by all items of the Form. One additional extension of not more than 30 days also may be applied for in the same manner as the initial application.

Subdivision (b) of the Rule states that the extension(s) prescribed in subdivision (a) are deemed granted unless denied within fifteen days. Subdivision (c) permits a request for further extensions (beyond the two contemplated by subdivision (a)), but these are deemed denied unless granted within fifteen days. The remaining subdivisions are not pertinent to this discussion.

Both the Government's Brief and the present *amicus* brief have mentioned some of the extraordinary events which occurred to Javelin in 1976. Since these bear upon the point we are here making, we briefly recapitulate these events.[43]

On March 6, 1976, a group of six Javelin directors seized control of its management, and one of their number made a number of serious accusations of wrongdoing against former management which the incumbents determined to investigate through counsel and by a reaudit. Through counsel they so advised the Enforcement Division in late March 1976, informing its members that the Form 10-K for 1975 due on March 30, 1976, would not be timely filed as a result. No formal request under Rule 12b-25 was made by the then incumbents or in their behalf. At the time of the discussion with the Enforcement Division Javelin was not in default of any current filing obligation.

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[43] Although matters dehors the Record are considered, it is not those matters but the Commission's reading of its rules, which is not subject to dispute, which is pertinent to the present discussion.

By the time the interim management was ousted on July 30, 1976, Javelin was delinquent in filing its 1975 Form 10-K and its Form 10-Q for the first quarter of 1976. It became delinquent in filing a second Form 10-Q in mid-August 1976. On November 8, 1976 the Commission filed a complaint for injunction on account of these delinquencies, invoking also prior (cured) delinquencies dating from 1971 to 1974. In mid-November 1976, a third Form 10-Q became delinquent. On or about December 1, 1976, Javelin filed its audited financial statements for 1975, thereby completing the filing of its Form 10-K for 1975. On or about December 9, 1976 its auditor purported to withdraw his certification as a result of pressures applied by the Assistant Director of Enforcement on Javelin's Special Compliance Counsel, who induced Javelin's auditors to speak to American auditors. Javelin's auditors thereupon also resigned as auditors.

During December, the Commission's Division of Corporation Finance declined comment or a waiver with respect to Javelin's proxy materials (because of its inability to supply two years "certified" financial statements), stating that the matter was in the hands of Enforcement. This required Javelin to postpone its annual meeting of shareholders into 1977, resulting in a violation of Canadian law which may have induced the Canadian Minister of Consumer and Corporate Affairs to commence his own investigation in Ottawa.

On February 14, 1976 the Commission amended its complaint to charge Javelin with having filed false and misleading periodic reports, the allegations of falsity largely bearing upon accounting treatments and principles.

Shortly before the due date of the 1976 Form 10-K on March 31, 1977, Javelin formally requested the Commis-

sion's Division of Corporation Finance to extend its time to file the 1976 Form 10-K for thirty days, pursuant to Rule 12b-25, assigning as reasons the change of auditors and other events (including the necessity for its new auditors to evaluate the allegations made in the Commission's amended complaint), and because the former interim management, while in power, had placed its members in control of a significant corporate subsidiary, Bison Petroleum & Minerals Limited ("Bison"), remaining in control of Bison notwithstanding their ouster from Javelin's management and refusing to supply Javelin with current information about Bison's operations so that Javelin was prevented from consolidating Bison's financial reports with its own as required by the Commission's rules.

One would have assumed that this catalogue of disasters, which greatly hampered the preparation of audited financial statements by newly-retained auditors, would have qualified Javelin for the thirty-day extension which it requested. Although Rule 12b-25 itself articulates no standards for the Commission's exercise of its power to extend filing dates, the Commission has explained such standards at page 7 of the brief it filed in the District Court for the District of Columbia in support of its motion for summary judgment in *SEC* v. *Investors Funding Corp. of New York*, D.D.C. Civil Action No. 840-73, *mandamus denied sub nom., Investors Funding Corp.* v. *Jones*, 161 U.S.App.D.C. 420, 495 F.2d 1000 (App.D.C. 1974), in which it stated that Rule 12b-25 was:

> "... designed to balance the public's interest in prompt reports with the fact that reporting companies must be afforded an adequate opportunity to prepare reports containing requisite financial and other material information. In order to alleviate the hardship that might occur on rare occasions if the time deadlines

> for filing periodic reports were absolute, the Commission has established an administrative procedure by which reporting companies may request limited, specified extensions of time in which to file their periodic reports. See Securities Exchange Act Rule 12b-25, 17 CFR 240.12b-25."

Notwithstanding the unprecedented upheavals in Javelin's management which were well known to the Commission; despite the Commission's own recent allegations of accounting improprieties which had occurred under predecessor accountants, necessitating detailed examination and consideration by Javelin's newly-retained auditors; and ignoring the problems of a hostile Bison management (of which the Commission had knowledge because of the auditors' qualification of their report in part because of such hostility)—all of which would seem to fit comfortably within the tests articulated by the Commission in its *Investor Funding* brief, *supra*—the Commission's Staff denied the extension request. Some six months later (months after the Form 10-K was actually filed), the Commission itself rubber-stamped its Staff's decision, invoking the identical grounds. The sole effect of such denial (a petition for review of which is now pending in the United States Court of Appeals for the District of Columbia Circuit, *Canadian Javelin Limited* v. *SEC*, Dkt. 77-1897), was to render Javelin in "violation" of the reporting requirements.[44]

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[44] The record on the petition for review from this denial, consisting of internal memoranda, including one from the Division of Enforcement to the Division of Corporation Finance is wholly expurgated, in accordance with the Commission's regular practice, so that it is impossible to know what facts *the Commission* purported to have considered, or what responses were made to Javelin's claim that the Staff misinterpreted its Rule in originally denying the request.

What is significant here is that one of the primary reasons assigned both by the Staff and later by the Commission itself for denying Javelin's manifestly warranted request for a thirty-day extension, was that:

> "3. Reasons stated in the application fail to indicate that the granting of the request is appropriate in the public interest or for the protection of investors."[45]

As our quotations from sections 13 and 12 themselves demonstrate, the language "in the public interest and for the protection of investors" (or some variant thereof) is used in the statute only to define the purpose and scope of the rules and regulations which the Commission is authorized to adopt. Presumably acting "in the public interest and for the protection of investors" the Commission did adopt Rule 12b-25, and Javelin *prima facie* showed that it was laboring under a "hardship that might occur on rare occasions if the time deadlines for filing periodic reports were absolute," thus warranting favorable consideration of its request under that Rule, as explained in *Investors Funding, supra.*

Manifestly, to require an issuer to make an affirmative demonstration that the requested delay in filing will, in and of itself, affirmatively advance the public interest and the protection of investors, is to require the impossible. Given the statutory policy of full disclosure of material corporate facts and finances, it could never be the case that a delay in furnishing such information is in the public

[45] Other reasons given were Javelin's prior latenesses (1971 to 1974): the fact that the Commission had filed a complaint charging violations of sections 13(a) and 10(b), and the fact that no assurance had been given that the report would be filed within the time requested, and that the requisite information was not elsewhere available. The former ground suggests a punitive or vindictive element irrelevant to the purpose of the Rule. The latter ground can rarely if ever be satisfied.

interest or protects investors, regardless of the reason or justification for the delay, which may be substantial. In short this reason for denial of the request is merely a captious way of attempting to justify a purely arbitrary or vindictive act.

This, we submit, is characteristic of the perverted reading of the statutory language regularly given it by the Commission. We stress that the language invoked in denying Javelin's extension request is *verbatim* the language involved in the present proceedings. Thus the Commission hides behind the phrase "public interest" when it wishes to avoid action, as on the extension request, and uses it as a sword when supererogating to itself a power never granted by Congress, as in summarily suspending trading over a long period. The proceedings in the Court of Appeals thus demonstrate that, as used by the Commission, the language in suit is meaningless, and the arguments advanced in this Court in its behalf are a mockery of the principles the Commission invokes.

Thus by its reading of its statutes the Commission's Staff can arbitrarily grant or deny extensions without having to explain itself, and this arbitrariness itself is a denial of due process of law. Unlike *Bowles* v. *Willingham*, 321 U.S. 503, 514 (1944), it is not possible to argue with respect to the Commission's open-ended utilization of the "public interest" and "protection of investors" language that

> "There is no grant of unbridled administrative discretion as appellee argues. Congress has not told the Administrator to fix rents whenever and wherever he might like and at whatever levels he pleases."

Nor, as in *American Sumatra Tobacco Corp.* v. *SEC, supra*, 110 F.2d at 120 (App.D.C. 1940), is it possible to say that "the Commission's decision rests on substantial evidence and on inferences which are not arbitrary and capricious."

Both in its entry of summary suspensions of trading and in its withholding of relief under Rule 12b-25 the Commission has demonstrated beyond cavil that it is capable of invoking the statutory language "public interest" and "protection of investors" to justify a decision reached by the Enforcement Division on undisclosed grounds, so long as that decision appears to consult the statutory requirements and to advance the statutory policy.

The Commission has regularly invoked the putative "public interest" and the ephemeral "protection of investors" as a smokescreen to mask its own violations of its governing statutes. The Court below correctly held that the talismanic invocation of the statutory language does not warrant or justify the Commission's disregard of statutory limitations upon its powers. Its decision should be affirmed.

CONCLUSION

The Present Controversy Is Not Moot. The Commission's Regular Resort To Consecutive Summary Suspensions Of Trading, Upon Putative "Findings" That The "Public Interest And Protection Of Investors" Requires It, Is Unauthorized By The Exchange Act And Improper, And The Court Should Affirm The Decision Below, Including The Direction To The Commission To Discontinue Its Unlawful Practice.

Respectfully submitted,

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APPENDIX

Appendix

Chronological Reorganization of App. 183-211

Year 1959

Company	Susp. Commenced	Susp. Term.	Duration
Jacobs, FLCo	2/11/59	12/17/59	1

Year 1961

Company	Susp. Commenced	Susp. Term.	Duration
Apex Mineral	5/11/61	9/2/62	48

Year 1962

Company	Susp. Commenced	Susp. Term.	Duration
Indus.Ent.	3/5/62	10/30/62	24
Auto.Proced.	3/16/62	9/11/62	18
PrecisionMic	4/4/62	12/19/62	26
Black Bear	4/19/62	12/19/62	24
Bruce, E.L.	6/13/62	11/18/62	16
Prosper Oil	9/21/62	12/19/62	9
Atl.Research	10/10/62	11/15/62	4

Year 1963

Company	Susp. Commenced	Susp. Term.	Duration
Cont.Vending	3/8/63	6/2/76†	484
TasteeFreez	9/16/63	12/21/64	10

Year 1964

Company	Susp. Commenced	Susp. Term.	Duration
Fotochrome	10/9/64	10/29/64	2

Year 1965

Company	Susp. Commenced	Susp. Term.	Duration
Empire Petr.	4/1/65	4/5/65	1
Belock Instr	6/22/65	11/8/65	15
Idamont Oil	6/23/65	7/26/65	3
VTR, Inc.	8/30/65	5/30/66	27
PinalCty.Ass	11/1/65	6/1/67	58
Bristol Dyn.	12/23/65	1/24/65	3
Noramco,Inc.	12/23/65	1/24/66	3
Fotochrome	12/23/65	1/21/66	3
Marrud, Inc.	12/28/65	1/16/66	2

Appendix

Year 1966

Company	Susp. Commenced	Susp. Term.	Duration
Assoc.Oil&G.	1/19/66	2/9/66	2
Grt.Am.Indus	3/31/66	4/14/66	2
Gilbert Co.	4/11/66	4/30/66	2
Elktron Co.	4/18/66	7/6/66	8
Grt.Am.Indus	4/29/66	10/23/66	18
Linc.Print'g	8/1/66	7/11/67	35
1st Std Corp	9/19/66	10/24/66	4
Sports Arena	12/7/66	6/17/67	19
Vitro Corp	12/11/66	12/11/66	1
Pakco Co.'s	12/20/66	12/21/67	37

Year 1967

Company	Susp. Commenced	Susp. Term.	Duration
Crescent Crp	1/6/67	1/8/67	1
Rand DevCorp	1/20/67	5/28/67	13
Electro-Nucl	3/22/67	4/25/67	4
Am.Steel/Pmp	4/21/67	6/2/67	4
Nor.Instrum.	4/22/67	8/11/67	11
Nylo-Thane	4/28/67	5/27/67	3
Steel Crest	5/12/67	10/4/67	15
S&P Nat'lCrp	5/12/67	9/4/67	12
Am.Plan Corp	5/16/67	6/6/67	2
Interam.Ind.	5/19/67	2/2/68	26
J.J.Newberry	5/24/67	5/25/74	1
Subscrip.TV	5/26/67	10/24/67	15
Jade Oil&Gas	6/9/67	8/2/67	5
Chemalloy	6/22/67	7/2/67	1
GoldfieldCrp	6/22/67	7/2/67	1
N.Am.Res.&Dv	7/20/67	3/30/68	26
Tel-A-Sign	7/26/67	9/19/67	6
PenroseIndus	7/28/67	12/31/67	16
Roto-Americ.	8/10/67	4/14/68	25
Coditron Crp	8/14/67	4/16/68	25
Dyna Ray Crp	8/17/67	10/14/67	6
Jodmar Indus	9/11/67	11/15/67	7
Fastline Inc	11/9/67	7/19/68	25
Silv.Shield	11/27/67	12/27/67	3
Nylo-Thane	12/8/67	12/12/67	1
Leeds Shoes	12/12/67	9/23/68	8
Rover Shoe	12/13/67	10/1/68	29
Rietz Indus	12/22/67	12/31/69	1

Appendix

Year 1968

Company	Susp. Commenced	Susp. Term.	Duration
Kashmir Oil	1/11/68	3/23/68	7
Santa Fe Int	1/15/68	3/30/68	8
Med.Electro.	1/19/68	1/26/68	1
Berlin Doman	1/25/68	1/29/68	1
Brilund Mine	1/25/68	1/29/68	1
InglewoodGas	1/26/68	2/14/68	2
Mesur-matic	1/26/68	2/4/68	1
HamiltonLIns	2/2/68	2/11/68	1
Cormac Chem.	2/7/68	6/29/68	14
Alscope Cons	2/19/68	9/2/68	20
Cameo-Pkway	2/23/68	9/14/68	20
Alcar Instr.	3/28/68	10/23/68	21
Alsco, Inc.	4/5/68	4/8/68	1
MeterMaidInd	4/12/68	4/18/68	1
Am.Checkmastr	4/22/68	8/4/68	8
GoldenAgeMin	5/6/68	10/2/68	15
Nat.Sweepstk	5/3/68	8/5/68	9
ParamountGen	6/7/68	11/9/68	16
RoystonCoali	6/10/68	10/10/68	12
NaglerHelico	6/16/68	6/28/68	1
KennebecCon.	6/26/68	8/4/68	4
Planet Oil	6/28/68	7/17/68	2
B.S.F. Co.	7/19/68	9/1/69	41
Comstk-Keyst	7/22/68	10/6/68	5
Alsco, Inc.	7/31/68	8/14/68	2
Mastercraft	8/15/68	9/21/68	4
Mtn.Sts.Dev.	8/28/68	4/28/69	24
Stanwood Oil	9/6/68	11/14/68	4
Top Notch	10/15/68	6/11/69	3
MooneyAircrf	10/18/68	3/16/69	15
Gale Industr	10/25/68	11/10/69	2
Dumont Corp	11/1/68	4/19/69	17
Texas Uran.	11/5/68	5/13/69	20
MajesticCap.	11/21/68	5/6/69	17
Comstk-Keyst	12/17/68	5/4/69	14
Electrogen	12/18/68	6/15/69	18
OmegaEquitie	12/20/68	4/28/69	13

Appendix

Year 1969

Company	Susp. Commenced	Susp. Term.	Duration
Capitol Hold	1/15/69	10/31/69	29
CrestIn.Uran	1/27/69	4/23/69	9
NorsulOil&Mg	1/27/69	2/25/69	1
Telstar, Inc	2/4/69	10/1/69	24
Mill Factors	2/12/69	3/9/69	3
Bartep Indus	2/19/69	7/18/69	15
Microbiologi	2/20/69	3/9/69	2
Comm.Fin.NJ	3/12/69	12/6/69	27
PhotoMarkCom	4/10/69	6/28/69	8
GulfAerospac	4/21/69	5/3/69	1
Tintair, Inc	4/28/69	5/7/69	1
Parvin/Dohrm	5/6/69	5/11/69	1
Cont.Inv.Crp	5/7/69	6/11/69	4
Fed.Oil Co.	5/20/69	6/18/69	3
Fed.Oil Co.	6/19/69	10/16/69	12
Rajac Indus	6/26/69	1/21/70	21
Hoe, R&Co.	7/2/69	7/11/69	1
Lib.Equities	7/28/69	12/4/69	13
CmwlthUnited	8/1/69	12/20/69	13
Fed.Purch.	8/6/69	10/5/69	6
Pac.Fid.Corp	8/18/69	12/5/69	11
LiquidOptics	9/18/69	1/15/70	12
Jonker Corp	9/29/69	10/8/69	1
Glas-FoamCrp	10/7/69	10/16/69	1
Geonics,Inc	10/21/69	10/30/69	1
Ocean Data	10/21/69	10/30/69	1
Oretek, Inc.	10/21/69	10/30/69	1
Space Data	10/21/69	10/30/69	1
Gray LineCrp	11/7/69	11/16/69	1
Ark.Val.Ind.	11/10/69	11/19/69	1
Prof.Health	11/13/69	11/22/69	1
Transceiver	11/17/69	11/26/69	1
Rev.Props.Co	11/19/69	12/9/69	2
Concepts & H	12/4/69	12/13/69	1
ControlMetal	12/4/69	12/13/69	1
Equity Group	12/4/69	12/13/69	1
Montana West	12/4/69	12/13/69	1
Vodel Corp	12/4/69	12/13/69	1
Cont.Dynamic	12/9/69	12/18/69	1
Falcon Speed	12/9/69	12/18/69	1

Appendix

Year 1969

Company	Susp. Commenced	Susp. Term.	Duration
Halbern Ind	12/9/69	12/18/69	1
Met Sports	12/9/69	12/18/69	1
MonarchElec.	12/9/69	12/18/69	1
Les StudsCo	12/11/69	12/20/69	1
Alaska Intl.	12/17/69	12/26/69	1
Consol.Smelt	12/22/69	12/31/69	1
ElevenProd.	12/22/69	12/31/69	1
MitchelleEnt	12/22/69	12/31/69	1
Trans-PacDev	12/22/69	12/31/69	1
Trans-PacEnt	12/22/69	12/31/69	1
Std.Computer	12/24/69	1/2/70	1

Year 1970

Company	Susp. Commenced	Susp. Term.	Duration
Carbon, Inc.	1/12/70	1/21/70	1
NaturizerInc	1/12/70	1/21/70	1
Plant Indus.	1/30/70	2/4/70	1
JB&T Co.	2/9/70	2/18/70	1
S&M Indus.	2/9/70	2/18/70	1
Imp.Inv.Corp	2/10/70	2/19/70	1
Chill-CanInd.	2/12/70	2/21/70	1
Drexel Indus	3/17/70	3/26/70	1
Transco Ind	3/17/70	3/26/70	1
Select Entrp	4/2/70	4/11/70	1
Permaspray	4/17/70	4/26/70	1
4 SeasnsNCen	5/13/70	5/24/70	2
Consol.Oil&G	5/18/70	6/9/70	3
Int.Scan.Dev	6/15/70	6/24/70	1
Health Eval.	6/25/70	7/4/70	1
Frasure Hull	7/1/70	7/10/70	1
Computraonic	7/6/70	7/15/70	1
Spokane Natl	8/21/70	8/30/70	1
Otis Oil&Gas	10/15/70	10/24/70	1
Picture Isl.	10/23/70	12/4/70	4
AART Comm.	10/30/70	11/8/70	1
Globus Int'l	11/9/70	11/28/70	2

Appendix

Year 1971

Company	Susp. Commenced	Susp. Term.	Duration
Am.Env.Contr	2/19/71	2/28/71	1
Rolls-Royce	3/10/71	3/19/71	1
Can.Javelin	3/17/71	4/5/71	1
L.I.Plastics	3/23/71	4/1/71	1
Spectrum Ltd	3/31/71	4/9/71	1
Crown Drug	4/2/71	4/11/71	1
Broker.Data	4/19/71	4/28/71	1
SatelliteSys	5/6/71	5/15/71	1
Philpot R.D.	5/19/71	5/18/71	1
Ecol.SciCorp	5/25/71	8/6/71	2
Indus.MfgCo	5/25/71	6/3/71	1
FAS Int'l.	5/27/71	11/22/71	18
LaddMtnMin'g	5/27/71	6/5/71	1
Am.Raceways	6/2/71	6/11/71	1
Pied Piper	6/22/71	7/2/71	1
Med.Inv.Corp	6/23/71	7/2/71	1
Dal Petrol.	6/29/71	7/9/71	1
Comp.Statist	7/8/71	7/17/71	1
Reclama.Sys.	7/8/71	7/27/71	1
Barr Finan.	7/13/71	7/22/71	1
E.&Pac.Indus	7/13/71	7/22/71	1
Hotei, Inc	7/13/71	7/22/71	1
Tilco, Inc.	7/30/71	8/9/71	1
Acme Missile	8/3/71	8/12/71	1
Camera Corp.	8/3/71	8/12/71	1
Cont.Dynamic	8/3/71	8/12/71	1
MSI Corp.	8/3/71	8/12/71	1
Ecol.SciCorp	8/17/71	12/18/72	68
Nat.TapeCorp	8/31/71	9/9/71	1
Telstar, Inc	9/24/71	10/3/71	1
N.Am.Resourc	9/30/71	10/9/71	1
Leisure Liv'g	10/12/71	11/1/71	2
MonarchGen'l	11/2/71	2/19/73	48
Coatings	12/7/71	3/25/72	11

Appendix

Year 1972

Company	Susp. Commenced	Susp. Term.	Duration
Dextra Corp.	1/21/72	2/6/72	2
Applied Dev.	2/3/72	6/1/72	12
Radia.Svc.As	2/16/72	7/29/73	53
Datamedia	2/28/72	3/8/72	1
Can.Javelin	3/7/72	8/8/72	16
Pyramid Comm	3/16/72	3/25/72	1
1st Fidel.Co	3/27/72	6/4/72	7
GrimesConsol	4/11/72	4/20/72	1
Dashew Bus	4/13/72	4/26/72	2
Cogar Corp.	4/17/72	8/14/72	12
Int.Prof.Col	4/19/72	4/28/72	1
Fla.D&M Co.	4/26/72	5/5/72	1
HollywoodInt	4/28/72	5/7/72	1
Inter-Isl.Mt	5/5/72	7/28/72	9
1st WorldCrp	5/10/72	5/4/73	36
Bevis Indus.	5/15/72	5/31/72	2
GraphicScan	5/19/72	5/23/72	1
LDS Dent.Sup	5/31/72	11/16/72	17
Clinton Oil	6/1/72	5/26/73	36
Levits Furn.	6/1/72	6/5/72	1
Accurate	6/29/72	8/8/73	40
Illus.WldEnc	7/14/72	7/28/72	2
4 Seasons Eq	7/17/72	7/26/72	1
4 SeasonsNrs	7/17/72	7/26/72	1
CommuniCyber	7/19/72	7/28/72	1
N.Am.Plan'g.	7/24/72	11/20/72	12
Duesenberg	7/26/72	9/3/72	4
LeisureConc.	7/26/72	10/3/72	7
Comp.Micro.	8/3/72	8/28/72	3
Dalto Electr	8/10/72	8/19/72	1
Fibrothane	8/17/72	9/15/72	3
Academic	8/21/72	8/30/72	1
Canusa Hold.	8/21/72	8/30/72	1
Dashew Bus.	8/30/72	9/8/72	1
MinuteApprvd	9/1/72	2/7/73	16
A-V Electr.	9/13/72	9/22/72	1
EMF Fin.Corp	9/25/72	10/4/72	1
Oceanography	9/27/72	10/31/72	4
PowerConvers	10/6/72	2/16/73	13
Goodway, Inc.	10/10/72	7/16/73	28

Appendix

Year 1972

Company	Susp. Commenced	Susp. Term.	Duration
Chrystalogra	10/11/72	5/18/73	22
Mktg.Commun.	10/17/72	11/14/72	3
Camin Indus.	11/1/72	11/9/72	1
Compudat.Sci	11/1/72	11/10/72	1
Allstate Inv	11/22/72	12/1/72	1
Int.Cont.Crp	11/27/72	11/30/72	1
DCS Finan.	11/29/72	3/28/73	12
NovaEquity	12/4/72	3/13/73	10
Major D Corp	12/6/72	12/15/72	1
Mgmt.Dynamic	12/8/72	3/21/73	11

Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Lilac Time	1/5/73	4/24/73	11
AVM Corp.	1/10/73	1/28/73	2
Spence&Green	1/12/73	1/21/73	1
Pelorex Corp	1/16/73	9/2/73	23
Marcon Elec.	1/23/73	2/1/73	1
Super.Comput	1/24/73	2/2/73	1
RoyalAirline	1/30/73	2/8/73	1
Charter Oil	2/1/73	2/10/73	1
Design-a-Phn	2/1/73	2/10/73	1
Met Sports	2/1/73	2/10/73	1
VTR, Inc.	2/1/73	2/10/73	1
Pac.Am.Oil	2/2/73	2/11/72	1
Grt.No., Inc	2/6/73	2/15/76	1
TexturedProd	2/13/73	2/22/73	1
LogosDev.Co.	2/14/73	7/3/73	15
AFCOA	2/20/73	3/1/73	1
ParadoxProd.	2/20/73	3/1/73	1
Lib.Inv.Life	2/23/73	3/4/73	1
VetcoOffshore	3/1/73	3/6/73	1
Benef.Labs	3/5/73	10/30/73	24
Proof Lock	3/5/73	7/12/73	13
Indecon, Inc.	3/5/73	3/14/73	1
Aadan Corp.	3/19/73	8/5/73	14
Charnita Inc.	3/21/73	3/30/73	1
LocatingDev.	3/22/73	3/31/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Photon, Inc.	3/26/73	7/23/73	12
TexturedProd	3/26/73	8/22/73	15
Bolton Grp	3/28/73	4/6/73	1
Eq.Fdg.Corp.	3/28/73	not given	?
EKG Svcs.Inc	3/28/73	4/6/73	1
Indus.Int'l	3/28/73	not given	?
TransbancDep	3/28/73	4/6/73	1
Orecraft,Inc	4/4/73	9/1/73	15
Albros Ind.	4/13/73	4/22/73	1
Elec.Concept	4/13/73	5/22/73	4
Trionics Eng	4/17/73	10/13/73	18
Administra.	4/26/73	5/5/73	1
Belair Fin.	4/26/73	5/5/73	1
Cosmos Indus	4/26/73	5/5/73	1
Custer Chan.	4/26/73	5/5/73	1
Ga.Factors	4/26/73	5/5/73	1
Jeff.Nat.Eq.	4/26/73	5/5/73	1
Std.Motels	4/26/73	5/5/73	1
Taco King	4/26/73	5/5/73	1
Transvac Inc	4/26/73	5/5/73	1
GiantStores	4/27/73	1/1/74	24
IFC Collat.	5/1/73	5/10/73	1
Inv.Fdg.Corp	5/1 73	5/10/73	1
Grt.Lks.Medi	5/2/73	5/11/73	1
Am.Land Co.	5/7/73	5/16/73	1
Appl.Synth.	5/7/73	5/16/73	1
Automa.Sci.	5/7/73	5/16/73	1
Dalto Elec.	5/7/73	5/16/73	1
Gourdine Sys	5/7/73	5/16/73	1
Ill.Cap.Inv.	5/7/73	5/16/73	1
Inland Systm	5/7/73	5/16/73	1
PennTechCorp	5/7/73	5/16/73	1
Pyramid Comm	5/7/73	5/16/73	1
Sci.Inciner.	5/7/73	5/16/73	1
Scotco Data	5/7/73	5/16/73	1
Mackey'sJer.	5/10/73	8/27/73	11
Air Calif.	5/11/73	6/19/73	4
Arlan's Dept	5/11/73	6/9/73	4
Applied Dev.	5/15/73 sic	5/14/73	1
Brown's Limo	5/15/73	5/24/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Henry'sDrive	5/15/73	5/24/73	1
PickwickOrgn	5/15/73	5/24/73	1
Cancer Detec	5/17/73	5/26/73	1
DeliciasIntl	5/17/73	5/16/73	?
Old TownCorp	5/22/73	6/10/73	2
Sav-On Inc	5/23/73	6/1/73	1
Volume Merch	5/23/73	6/1/73	1
BBI Inc.	5/24/73	not given	?
1st Home Inv	6/1/73	6/10/73	1
Pacer Corp	6/1/73	8/19/73	8
Cons.Med.Ind	6/4/73	6/13/73	1
N.Am.Resourc	6/4/73	6/13/73	1
Cstl.St.GasC	6/5/73	9/26/73	12
JB&T Co.	6/8/73	6/17/73	1
Royal Props.	6/8/73	6/17/73	1
Develco, Inc	6/12/73	6/21/73	1
Input Inc	6/12/73	6/21/73	1
SportsWldCom	6/12/73	6/21/73	1
Supreme Oil	6/12/73	6/21/73	1
TMA Co.	6/12/73	6/21/73	1
Nat.Env.Corp	6/13/73	6/22/73	1
Nat.Inst.Bet	6/13/73	6/22/73	1
ParagonSecur	6/13/73	8/11/73	1
Sandia Intl	6/13/73	6/22/73	1
Seaferro Inc	6/13/73	6/22/73	1
Quad Metals	6/14/73	6/23/73	1
Quote Co.Am.	6/14/73	6/23/73	1
Land&Leisure	6/18/73	6/27/73	1
Apollo Ind.	6/22/73	7/1/73	1
CEC Corp.	6/22/73	7/1/73	1
Crown Drug	6/22/73	7/1/73	1
ElCaminoFin.	6/22/73	7/1/73	1
Fly'g.Diamon	6/22/73	7/1/73	1
MonmouthInd.	6/22/73	7/1/73	1
PMC-Pow.Met	6/22/73	7/1/73	1
Royal Props.	6/22/73	not given	?
Ecom-Systems	6/25/73	7/4/73	1
Gen'lGilbert	6/25/73	7/4/73	1
ComprHealth	6/26/73	7/5/73	1
Horizon Ind	6/26/73	7/5/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Int.Dev.Corp	6/26/73	7/5/73	1
Secur.of Am.	6/26/73	7/5/73	1
Avia.Hold.Co.	6/28/73	7/7/73	1
GlenExplora.	6/28/73	7/7/73	1
IntAssemblix	6/28/73	7/7/73	1
Philpot R.D.	6/28/73	7/7/73	1
Pace Indus.	6/28/73	7/7/73	1
Scient.Contr	6/28/73	7/7/73	1
Silv.Reef	6/28/73	7/7/73	1
Grt.Repub.Fi	6/29/73	7/8/73	1
Royal Atlas	6/29/73	7/8/73	1
ChrisMcGuire	7/2/73	7/11/73	1
Aztzec Prod.	7/3/73	11/9/73	10
DatamediaInt	7/5/73	7/14/73	1
Jeff.Nat.Tr.	7/5/73	7/14/73	1
Malaker Corp	7/5/73	7/14/73	1
Nat.Filtron.	7/5/73	7/14/73	1
BISI Inc.	7/6/73	7/15/73	1
Display.Sci.	7/6/73	7/15/73	1
Hetra Comput	7/6/73	7/15/73	1
MultitechInc	7/6/73	7/15/73	1
Progres.Nat.	7/6/73	7/15/73	1
Int.Syst.Ass	7/11/73	7/20/73	1
Atreo Mfg.	7/12/73	7/21/73	1
Credit Syst.	7/12/73	7/21/73	1
Data Pacific	7/12/73	7/21/73	1
Medichek Inc	7/12/73	7/21/73	1
Tycodyne Ind	7/12/73	7/21/73	1
Telectro-Mek	7/16/73	7/25/73	1
JohnnyUnitas	7/18/73	7/27/73	1
Radioptics	7/18/73	7/27/73	1
Am.Home Ind.	7/19/73	7/28/73	1
OffshoreSea	7/19/73	7/28/73	1
Gen'lShelter	7/20/73	7/29/73	1
Program.Sci.	7/20/73	7/29/73	1
RidgeBio-Lab	7/24/73	8/2/73	1
Test Corp.	7/24/73	8/2/73	1
DekcraftCorp	7/25/73	8/3/73	1
Di-anControl	7/26/73	8/4/73	1
Fed.Franchss	7/26/73	8/4/83	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Lyntex Corp.	7/26/73	8/4/73	1
M ch.Enterpr	7/26/73	8/4/73	1
I.D.Prec.Crp	7/31/73	8/9/73	1
Seggos Indus	7/31/73	8/9/73	1
Syner Data	7/31/73	8/9/73	1
Am.Beaut.Cit	8/1/73	8/10/73	1
Fed.Hydronic	8/1/73	8/10/73	1
PlayersGroup	8/1/73	8/10/73	1
Avtek Corp.	8/2/73	8/11/73	1
Coditron Crp	8/2/73	8/11/73	1
DiapulseCorp	8/3/73	8/12/73	1
Env.Svcs.Inc	8/3/73	8/12/73	1
Hi-plainsEnt	8/3/73	8/12/73	1
IMC Int'lInc	8/3/73	8/12/73	1
Intst.Comput	8/3/73	8/12/73	1
C.Sts.G.Prod	8/8/73	9/26/73	5
Colo.Intst.	8/8/73	9/26/73	5
Home-StakePr	8/8/73	5/17/74	28
Kent Ind.	8/8/73	8/17/73	1
Korakorp Ind	8/8/73	1/24/74	17
MSI Corp.	8/8/73	8/17/73	1
Silver Explr	8/8/73	8/17/73	1
Vahlsing,Inc	8/13/73	8/22/73	1
CIC Indus.	8/14/73	9/26/73	5
Collins Rad	8/16/73	8/22/73	1
PetroSilver	8/23/73	9/1/73	1
Compusamp	9/4/73	9/13/73	1
Stratton Grp	9/7/73	7/26/74	32
Teleprompter	9/7/73	11/11/73	7
Diver.Earth	9/12/73	10/1/73	2
Faim Info.	9/12/73	9/21/73	1
Fr.Hubinger	9/12/73	9/21/73	1
N.Am.BldgTch	9/12/73	9/21/73	1
Co-Build Cos	9/18/73	9/27/73	1
Aberle Ind.	9/19/73	9/28/73	1
Appl.Fluidic	9/19/73	9/28/73	1
Sanita Svc	9/24/73	12/2/73	7
Cons.Med.Ind.	9/27/73	10/6/73	1
Eldredge&Co.	9/27/73	10/6/73	1
Grtr.Contin.	9/27/73	10/6/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Airtronics	9/28/73	10/7/73	1
Allied Mgmt.	9/28/73	10/7/73	1
HanleyConsol	10/3/73	10/12/73	1
LangisSilver	10/3/73	10/12/73	1
Omni-RX Hlth	10/5/73	10/14/73	1
Penn.LifeCo.	10/10/73	10/25/73	2
Globa, Inc.	10/11/73	10/20/73	1
Hydroplex	10/11/73	10/20/73	1
Torginal Ind	10/11/73	10/20/73	1
Nat.Health	10/12/73	10/21/73	1
Suitomat Crp	10/16/73	10/25/73	1
Techn.Resour	10/18/73	10/27/73	1
Autobale Am.	10/24/73	11/12/73	2
Fairfld Genl.	10/31/73	11/9/73	1
Tith Alumin.	11/6/73	11/15/73	1
Omega Alpha	11/7/73	1/15/74	7
Std.Systems	11/8/73	11/17/73	1
Tech.Resour.	11/8/73	5/26/74	20
I.E.A.Corp.	11/13/73	11/22/73	1
StanndcoDev.	11/13/73	12/12/73	3
Brogan Assoc	11/20/73	11/29/73	1
Mediatrics	11/20/73	11/29/73	1
PattersonCrp	11/21/73	4/13/74	14
Sayre&Fisher	11/21/73	11/30/73	1
Acme Missile	11/27/73	12/6/73	1
AFM Holding	11/27/73	12/6/73	1
Duesenberg	11/27/73	12/6/73	1
Seaboard Am	11/28/73	4/6/74	13
Can.Javelin	11/29/73	1/12/75	41
Agard Elec.	12/4/73	12/13/73	1
AIM Co.'s.	12/4/73	12/13/73	1
ABC Frt.	12/4/73	12/13/73	1
Arteo Corp.	12/4/73	12/13/73	1
Mtn.Equities	12/4/73	12/13/73	1
OptronicsSys	12/4/73	12/13/73	1
Quotamation	12/4/73	12/13/73	1
Sibany Mfg.	12/4/73	12/13/73	1
Tilco, Inc.	12/4/73	12/13/73	1
Advance	12/11/73	12/20/73	1
Atek Ind.	12/11/73	12/20/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Reclama.Sys.	12/11/73	12/20/73	1
I.S.IndusLtd	12/12/73	12/21/73	1
Purif.System	12/12/73	12/21/73	1
Parkview-Gem	12/13/73	12/22/73	1
PhotoMagn.Sys	12/18/73	12/27/73	1
PetrolDev.Cp	12/18/73	12/27/73	1
TelecheckInt	12/18/73	12/27/73	1
Go Publ.Co.,	12/19/73	12/28/73	1
Mod.Dynamics	12/19/73	12/28/73	1
PortafoneCrp	12/21/73	12/30/73	1
Sports Intl	12/21/73	12/30/73	1

Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Airac	1/3/74	1/12/74	1
Ecol.DevCorp	1/3/74	1/12/74	1
Hoffman Nwrk	1/3/74	1/12/74	1
Ins.Ind.Inc	1/3/74	1/12/74	1
ITI Electr.	1/3/74	1/12/74	1
My Toy Co.	1/3/74	1/12/74	1
TransNatlCom	1/3/74	1/12/74	1
Botar Group	1/8/74	1/27/74	2
Philipsborn	1/9/74	1/18/74	1
FultonNtlGrp	1/18/74	1/27/74	1
Drew Nat'l.	1/24/74	2/2/74	1
Land&Leisure	1/24/74	2/2/74	1
Nat.Comp.Svc	1/24/74	2/2/74	1
Personnel Cor	1/25/74	2/3/74	1
Assoc.Intl.	1/30/74	2/8/74	1
HollowayWest	1/30/74	2/8/74	1
Silver Gull	1/30/74	2/8/74	1
Silv.Gl.Oil	1/30/74	2/8/74	1
TR-3 Intl.	1/30/74	2/8/74	1
NatlAlfalfa	2/5/74	5/1/74	9
Repub.N.LIns	2/7/74	4/7/74	6
Arboreal As.	2/11/74	2/20/74	1
Albee Homes	2/12/74	2/21/74	1
B.G.I. Corp.	2/12/74	2/21/74	1
Granby MngCo	2/20/74	3/20/74	3

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Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Gamma Proces	2/21/74	3/2/74	1
Harvest Mkts	2/21/74	3/2/74	1
Lamp Fashion	2/21/74	3/2/74	1
Manati Indus	2/21/74	3/2/74	1
Applied Dev.	2/26/74	3/7/74	1
Bldg.Systems	2/26/74	3/7/74	1
Electrogasdy	2/26/74	3/7/74	1
Capezio etc	2/27/74	3/8/74	1
Ecology Inc	2/27/74	3/8/74	1
Franklin Ind	2/27/74	3/8/74	1
Harvey Walt.	2/27/74	3/8/74	1
Laser Sci.	2/27/74	3/8/74	1
CM Indus.	2/28/74	3/9/74	1
CrossCtryInd	2/28/74	3/9/74	1
CusterChan'l	2/28/74	3/9/74	1
Decair Corp	2/28/74	3/9/74	1
Gail Roberts	2/28/74	3/9/74	1
Geon Industr	3/1/74	4/29/74	6
Silenus Corp	3/2/74	3/30/74	3
Brinco, Ltd.	3/11/74	4/7/74	3
Electrospace	3/12/74	4/20/74	4
Am.Data Svc	3/21/74	3/30/74	1
Somatronics	4/10/74	4/19/74	1
AllSt.Credit	4/11/74	4/20/74	1
Beck Indus.	4/11/74	4/20/74	1
Brian Lloyd	4/11/74	4/20/74	1
Cambr.Nucl.	4/11/74	4/20/74	1
Cassette	4/11/74	4/20/74	1
Compuguide	4/11/74	4/20/74	1
Data Indus.	4/11/74	4/20/74	1
Datatronics	4/11/74	4/20/74	1
Dextra Corp.	5/11/74	4/20/74	1
Dialscan Sys	4/11/74	4/20/74	1
Diversa, Inc	4/11/74	4/20/74	1
Dumont Corp.	4/11/74	4/20/74	1
Durst, SF&Co	4/11/74	4/20/74	1
Ebinger Bakg	4/11/74	4/20/74	1
EFG Comp.Sve	4/11/74	4/20/74	1
Empire Intl.	4/11/74	4/20/74	1
Env.Dynamics	4/11/74	4/20/74	1

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Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Fall R.Indus	4/11/74	4/20/74	1
GoodwayCopy	4/11/74	4/20/74	1
GuentherSyst	4/11/74	4/20/74	1
Heidler Corp	4/11/74	4/20/74	1
HemispherHo	4/11/74	4/20/74	1
HydroSkiIntl	4/11/74	4/20/74	1
Int.Hydrolns	4/11/74	4/20/74	1
Juness Indus	4/11/74	4/20/74	1
Kennedy Sp.	4/11/74	4/20/74	1
Life of Ky.	4/11/74	4/20/74	1
Mega Systems	4/11/74	4/20/74	1
Metromodular	4/11/74	4/20/74	1
Nat.R.T.Corp	4/11/74	4/20/74	1
Nat.Identif.	4/11/74	4/20/74	1
Nat.Radio Co	4/11/74	4/20/74	1
Photasystems	4/11/74	4/20/74	1
R.T.NatlCorp	4/11/74	4/20/74	1
Ram ToolCorp	4/11/74	4/20/74	1
RepublicColr	4/11/74	4/20/74	1
Sawyer-Adeco	4/11/74	4/20/74	1
ScooperDoopr	4/11/74	4/30/74	2
S.F. DurstCo	4/11/74	4/20/74	1
SheffldWatch	4/11/74	4/20/74	1
Shore-Calnev	4/11/74	4/20/74	1
Site-Pac	4/11/74	4/20/74	1
Ski Park Cit	4/11/74	4/20/74	1
SpencerKenne	4/11/74	4/20/74	1
Spokane Natl	4/11/74	4/20/74	1
Symmar Inc.	4/11/74	4/20/74	1
Telectronics	4/11/74	4/20/74	1
Textronics	4/11/74	4/20/74	1
Std.LifeCorp	4/25/74	5/4/74	1
ET&T Leasing	4/30/74	5/9/74	1
Servisco	5/6/74	5/15/74	1
Allied Eq.	5/7/74	5/16/74	1
Caled.Silver	5/7/74	5/16/74	1
Gold,Judith	5/7/74	5/16/74	1
Lookout Mtn.	5/7/74	5/16/74	1
NancyLeeMine	5/7/74	5/16/74	1
New EraMines	5/7/74	5/16/74	1

Appendix

Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Silver Bowl	5/7/74	5/16/74	1
SignalSilver	5/7/74	5/16/74	1
SovereignInd	5/7/74	5/16/74	1
Am.Exp.Ind.	5/8/74	5/17/74	1
Am.Exp.Lines	5/8/74	5/17/74	1
Cook Indus.	5/8/74	5/9/74	1
Cook Treadwl	5/8/74	5/17/74	1
Apollo Ind.	5/10/74	5/19/74	1
FranklinN.Bk	5/13/74 pref.	10/31/74	17
Frkln NYCorp	5/13/74 com&pr	10/31/74	17
Anita Lynn	5/14/74	5/23/74	1
Environonics	5/14/74	5/23/74	1
Std.Dredging	5/14/74	5/23/74	1
FranklnN.Bk.	5/16/74 debent	10/31/74	17
Frkln NYCorp	5/16/74 notes	10/31/74	17
Cook Treadwl	5/18/74	5/27/74	1
Cont.Dynamic	5/22/74	5/31/74	1
GlfSo.MtgeIn	5/31/74	6/9/74	1
Libco Corp.	6/6/74	6/15/74	1
1st Wis.Mtge	6/13/74	6/22/74	1
Sportworld	6/14/74	6/23/74	1
Fisco, Inc.	6/17/74	6/26/74	1
Nicoa Corp.	6/18/74	not given	?
MonarchGen'l	6/20/74	6/29/74	1
Cmwlth.N.R.T.	6/25/74	7/14/74	2
Fanfare Corp	6/25/74	7/4/74	1
Texon Energy	6/26/74	7/5/74	1
Hershberger	7/2/74	7/11/74	1
Am.Variety	7/3/74	7/12/74	1
Prairie Petr	7/3/74	7/12/74	1
GoldfieldMns	7/17/74	7/26/74	1
Int.Chem.Dev	7/26/74	8/4/74	1
Int.Scan.Dev	7/26/74	8/4/74	1
Am.All-Serv	7/30/74	8/8/74	1
Arthritis	8/6/74	8/15/74	1
Leader Intl	8/13/74	8/22/74	1
Transogram	8/13/74	8/22/74	1
Cont.Resourc	8/14/74	8/23/74	1
Korn/Perry	8/14/74	8/23/74	1
OpenRoadInd.	8/29/74	9/7/74	1

Appendix

Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Savoy Indus.	9/3/74	11/25/74	8
NaturizerInc	9/10/74	9/19/74	1
Avis, Inc.	10/1/74	10/16/74	2
Atl.Indus.	10/2/74	10/11/74	1
Bio-Med.Sci.	10/11/74	not given	?
Amcourt Sys.	10/31/74	11/9/74	1
GrtrWashInv.	11/7/74	12/26/74	5
Aero Resourc	11/13/74	11/22/74	1
Avien, Inc.	11/13/74	11/22/74	1
Car.Carib.	11/13/74	11/22/74	1
D.C.Transit	11/13/74	11/22/74	1
I-T-E Imper.	11/15/74	12/12/74	1
AT&T	11/20/74	11/21/74	1
Betta Ortho.	11/21/74	11/30/74	1
Harvard Ind.	11/27/74	12/6/74	1
Osterloh&D.	12/10/74	12/19/74	1
Iberia Intl.	12/12/74	12/21/74	1
Okuraya/Dav.	12/12/74	12/21/74	1
SossinSystem	12/12/74	12/21/74	1
Data Lease	12/19/74	12/28/74	1
DisposableRe	12/19/74	2/28/74	1
Potter Instr	12/19/74	12/28/74	1
Stelber Ind	12/19/74	12/28/74	1

Year 1975

Company	Susp. Commenced	Susp. Term.	Duration
Am.Agronomic	1/3/75	not given	?
Burman Oil	1/3/75	not given	?
Can.Javelin	1/13/75	1/22/75	1

Certificate of Service

The undersigned, being a member of the Bar of the Supreme Court of the United States, hereby certifies that on the day of January, 1978, he caused to be personally served upon the Solicitor General of the United States, counsel for Petitioner, and upon Samuel H. Sloan, Respondent *pro se*, three (3) copies each of foregoing brief *amicus curiae*.

Dated: New York, New York
January 31, 1978

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Reginald Leo Duff
Attorney for the *Amicus Curiae*
Canadian Javelin Limited